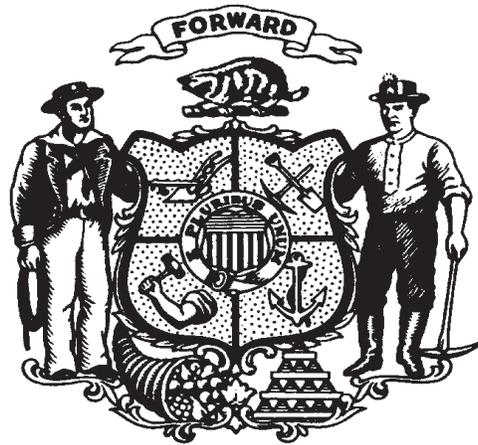


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Emergency Rules Now in Effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection

Rules adopted creating **s. ATCP 21.20**, relating to voluntary certification of firewood dealers.

Finding of Emergency

(1) The Wisconsin department of natural resources (“DNR”) has adopted rules, under s. NR 45.04 (1) (g), to restrict the movement of firewood into Wisconsin state parks. The DNR rules are designed to prevent the spread of exotic pests, such as Emerald Ash Borer, that may inhabit firewood. The DNR rules prohibit the possession of firewood in a state park unless the firewood comes from within 50 miles from the park, or from a more distant source approved by the Department of Agriculture, Trade and Consumer Protection (“DATCP”).

(2) The DNR rules effectively prohibit a firewood dealer located more than 50 miles from a state park from supplying firewood to that state park, except as authorized by DATCP. That prohibition may work a substantial hardship on firewood dealers who normally supply significant quantities of firewood to parks located more than 50 miles away.

(3) This rule creates a voluntary certification program for firewood dealers who obtain their wood from Wisconsin and agree to treat the wood for potential pests such as Emerald Ash Borer. Certified firewood dealers may supply firewood to Wisconsin state parks, even though they are located more than 50 miles from those parks.

(4) DATCP is adopting this rule as a temporary emergency rule, pending completion of “permanent” rulemaking proceedings. DATCP cannot complete permanent rules in

time for the 2007 camping season. Without this emergency rule, certain firewood dealers may experience unnecessary financial hardship during the 2007 camping season, because they will be precluded from supplying firewood to state parks more than 50 miles away. This emergency rule allows those firewood dealers to continue supplying firewood to more distant state parks, subject to sourcing and treatment requirements that are reasonably designed to prevent the spread of serious exotic pests.

Publication Date: May 22, 2007
Effective Date: May 22, 2007
Expiration Date: September 19, 2007
Hearing Date: June 26, 2007

Commerce

(Licenses, Certifications, etc., Ch. Comm 5)

Rules adopted revising **ch. Comm 5**, relating to licensing of elevator contractors and installers.

Exemption From Finding of Emergency

Under the nonstatutory provisions of 2005 Wis. Act 456, the Department of Commerce was directed to issue emergency rules that implement provisions of the Act. The Act specifically states: “Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of commerce is not required to provide evidence that promulgating rules under this subsection as emergency rules is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for the rules promulgated under this subsection.”

The Act mandates the licensing of elevator contractors and installers. Under the Act no person may engage in the business of installing or servicing conveyances or working on a conveyance unless licensed as of June 1, 2007. These emergency rules are being adopted in order to provide the elevator industry the ability to comply with licensing aspects of the Act and continue working until permanent rules are implemented.

Publication Date: June 1, 2007
Effective Date: June 1, 2007
Expiration Date: October 29, 2007
Hearing Date: June 27, 2007

Commerce

(Financial Resources for Businesses and Communities, Chs. Comm 104–131)

Rules adopted creating **ch. Comm 135**, relating to tax credits and exemptions for internet equipment used in the broadband market.

Exemption From Finding of Emergency

These rules establish the criteria for administering a program that will (1) certify businesses as temporarily eligible for tax credits and exemptions for Internet equipment used in the broadband market, and (2) allocate up to

\$7,500,000 to these businesses for these tax credits and exemptions.

Pursuant to section 227.24 of the statutes, this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper. In accordance with section 17 (1) (d) of 2005 Wisconsin Act 479, this rule will remain in effect until January 1, 2008, or until the Department reports its certifications and determinations under this rule to the Department of Revenue, whichever is sooner.

The rules specify who is eligible for the income and franchise tax credits and the sales and use tax exemptions in this program, for Internet equipment used in the broadband market. Eligible equipment is also specified, along with how to apply for the certifications and allocations. Parameters for allocating the authorized total of \$7,500,000 are likewise specified. These parameters emphasize (1) efficiently initiating broadband Internet service in areas of Wisconsin that otherwise are not expected to soon receive this service, and (2) encouraging economic or community development. The rule chapter also describes the time-specific legislative oversight that is established in 2005 Act 479 for these allocations, and describes the follow-up reports that the Act requires from every person who receives a sales or use tax exemption under this chapter.

Publication Date: February 20, 2007
Effective Date: February 20, 2007
Expiration Date: See section 17 (1) (d) 2005 Wis. Act 479
Hearing Date: March 26, 2007

Dentistry Examining Board

Rule adopted amending the effective date of CR 04-095, by amending the emergency rule that took effect on December 29, 2006, relating to the requirements for administering the office facilities and equipment for safe and effective administration and the applicable standards of care, and to provide for reporting of adverse occurrences related to anesthesia administration.

Finding of Emergency

The board has made a finding of emergency. The board finds that failure to delay the effective date of CR04-095, from July 1, 2007 to November 1, 2007 will create a danger to the public health, safety and welfare. The extra four months are needed to allow the implementation of the rule to occur and to ensure the continued use of conscious sedation for dental patients. The rules created a course requirement for receiving a conscious sedation permit that did not exist. Courses have and are being developed to meet this requirement. By November 1, 2007, the course will have been available to enough dentists to ensure the continuation of the use of conscious sedation.

Publication Date: June 24, 2007
Effective Date: July 1, 2007
Expiration Date: November 28, 2007
Hearing Date: July 11, 2007

Elections Board

Rules adopted creating s. EIBd 3.50, relating to pricing of voter information available from the Statewide Voter Registration System.

Exemption From Finding of Emergency

The Elections Board finds that under Section 180 of the non-statutory provisions of 2005 Wisconsin Act 451, in subsection (4), the Elections Board may promulgate emergency rules under s. 227.24, Stats., implementing s. 6.36 (6), Stats., as created by Wisconsin Act 451. Notwithstanding s. 227.24 (1) (c) and (2), Stats., emergency rules promulgated under subsection (4) remain in effect until the date on which permanent rules take effect. Notwithstanding s. 227.24 (1) (a) and (3), Stats., the Elections Board is not required to provide evidence that promulgating a rule under subsection (4) as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under subsection (4).

This amended rule interprets ss. 5.02 (14) and (17), 6.27, 6.275, 6.29, 6.33, 6.34, 6.35, 6.36, 6.40, 6.45, 6.46, 6.48, 6.50, 6.54, 6.55, 6.56, and 6.57, Stats. The rule requires that persons who request copies of information from the Statewide Voter registration System must pay, for each such copy, a charge calculated under the provisions of the rule.

At the present time, the Elections Board is limited, in the fee that it can charge for information provided by the Statewide Voter registration System, to the fee set by s. 19.35 (3), Stats.: "the actual, necessary, and direct cost of reproduction and transcription of the record." In order to recover both the cost of reproduction and the cost of maintaining the list at the state and local level, rather than having its charge be limited to the amount currently provided under the public records law, the Board needs an immediate rule reflecting both cost components required by the new statute.

Publication Date: May 12, 2007
Effective Date: May 12, 2007
Expiration Date: See section 180 (4), 2005 Wis. Act 451
Hearing Date: June 11, 2007

Health and Family Services (Medical Assistance, Chs. HFS 100—)

Rules adopted revising ch. HFS 107, relating to benefits covered by the Wisconsin Medical Assistance program, and affecting small businesses.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public, health, safety and welfare. The facts constituting the emergency are as follows:

A recent revision to s. HFS 107.07 (2), the prior authorization subsection of the dental services section of the Medicaid Administrative Code, caused a result which was not intended by the Department. To correct this error, the

Department is promulgating rules to clarify that the Department's intent is to require prior authorization for orthodontia and other services provided under early and periodic screening, diagnosis and treatment (EPSDT) services. The medical necessity of these services is determined by the Department based on information submitted by the provider. Thus, it is necessary to require prior authorization to determine the appropriateness of providing these services to an individual recipient.

In the previous rulemaking (Clearinghouse Rule 05-033) the prior authorization requirement was removed for most procedures that had high rates of approval (greater than 75%). The change was intended to reduce the staff time required for dental offices to process prior authorization requests. The Department did not intend to remove the requirement for prior authorization for orthodontia and other services. The Department specifically stated, in Clearinghouse Rule 05-033, that "Procedures where appropriate pricing requires a high degree of clinical knowledge (e.g., orthodontics and TMJ surgery), and procedures with strict time limitations (e.g., dentures) are also proposed to retain prior authorization."

The language that was adopted, however, has been interpreted by at least one dentist to mean that prior authorization is no longer required to provide orthodontia to recipients. This interpretation was upheld by an administrative law judge in an administrative hearing. The Department believes that the interpretation of the administrative law judge could open up the Department to being required to pay for procedures that are purely cosmetic. Because the intent of the Department and the language adopted, as recently interpreted, had opposite effects, the Department is promulgating rules to revise section s. HFS 107.07 to clarify the intent of the rule.

A basic concept of the Medicaid program is that services must be medically necessary to be reimbursable. Allowing the existing rule language to remain in its present form could require reimbursement for orthodontia that is not medically justified.

Publication Date: April 30, 2007
Effective Date: April 30, 2007
Expiration Date: September 27, 2007

Natural Resources (5)

(Fish and Game, etc., Chs. NR 1—)

1. Rules adopted amending s. NR 1.21 and creating s. NR 1.26, relating to contracting for timber sale establishment services on state land.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection."

Section 1 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 makes

technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

2. Rules adopted creating s. NR 45.075, relating to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

Exemption From Finding of Emergency

As provided in section 13 of 2005 Wis. Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.

Publication Date: February 6, 2007
Effective Date: February 6, 2007
Expiration Date: July 6, 2007
Hearing Date: March 21, 2007

3. Rules adopted revising chs. NR 19 and 20, relating to the control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from

affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: April 8, 2007
Effective Date: April 8, 2007
Expiration Date: September 5, 2007
Hearing Date: May 3, 10 and 17, 2007

4. Rules adopted revising **chs. NR 19 and 20**, relating to the control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

This emergency rule clarifies and expands the emergency rules put into effect on April 8, 2007.

Publication Date: May 2, 2007
Effective Date: May 2, 2007
Expiration Date: September 5, 2007
Hearing Date: June 11, 2007

5. Rules adopted revising emergency rules affecting **chs. NR 19 and 20** relating to control of fish diseases and invasive species.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. On May 11, the Department received notice that freshwater drum collected from Little Lake Butte des Morts were infected with the VHS virus. Earlier VHS had been discovered in the Great Lakes, and was known to be moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois

River, allowing fish and fish disease to reach the Mississippi drainage basin. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS, including most of our most important recreational and commercial species. The VHS virus can be transported from infected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in Wisconsin is therefore a threat to the public health or safety or to the environment.

Publication Date: May 27, 2007
Effective Date: May 27, 2007
Expiration Date: September 5, 2007
Hearing Date: July 11, 2007

Natural Resources (2) (Environmental Protection – Water Regulation, Chs. NR 300–)

1. Rules adopted revising **ch. NR 345**, relating to general permits for dredging in Great Lakes navigable waterways.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits for dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits. Without emergency rules to create general permits, all dredging, including operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits require an individual permit with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits to be in effect for the 2007 summer season, with specific standards for operation of a motor vehicle, on the beds of the Great Lakes to remove plant and animal nuisance deposits.

Publication Date: June 10, 2007
Effective Date: June 10, 2007
Expiration Date: November 7, 2007
Hearing Date: July 10, 2007

2. Rules adopted revising **chs. NR 320, 323, 328, 329, 341, 343 and 345**, relating to general permit criteria requiring decontamination of equipment for invasive species and viruses.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect

the public health, safety and welfare. The Wisconsin Legislature enacted 2003 Wisconsin Act 118 to streamline the regulatory process for activities in public trust waters. The state has an affirmative duty to administer the law in a manner consistent with the public trust responsibilities of the State of Wisconsin under Article IX, Section I of the Wisconsin Constitution.

Act 118 identifies certain activities that may be undertaken under a general permit. There are no statutory general permits standards that require decontamination of equipment for invasive species and viruses. Without emergency rules to create new general permit standards, any condition imposed would be limited to individual permits only with an automatic 30-day public notice. The required 30-day comment period will unnecessarily delay projects that otherwise could go ahead with prescribed conditions established in a general permit. To carry out the intention of Act 118 to speed decision-making but not diminish the public trust in state waters, these emergency rules are required to establish general permits standards to be in effect for the 2007 summer season, with specific standards that require decontamination of equipment for invasive species and viruses.

In addition, The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is: The World Health Organization for Animal Health (OIE) lists viral hemorrhagic septicemia (VHS) as a "notifiable" disease, meaning that outbreaks must be reported immediately. VHS has been discovered in the Great Lakes, and is moving from the lower lakes (Ontario and Erie), where it has already caused large-scale fish kills, via Huron, where it has been present since 2005, to the upper lakes (Michigan and Superior). Lake Michigan is connected to the Mississippi River by the Chicago Sanitary and Ship Canal and Illinois River, allowing fish and fish diseases to reach the Mississippi drainage. Twenty-seven species of Wisconsin fish have been identified as susceptible by the OIE or USDA APHIS,

including most of our most important recreational and commercial species. The VHS virus can be transported from affected areas to areas where it is not yet present via live fish, fish eggs, refrigerated or frozen dead fish, or water where infected fish have been present. The presence of VHS virus in the Great Lakes is therefore a threat to the public health or safety or to the environment.

Publication Date: July 12, 2007
Effective Date: July 12, 2007
Expiration Date: December 9, 2007

Workforce Development (Workforce Solutions, Chs. DWD 11 to 59)

Rules adopted revising **ch. DWD 56**, relating to child care enrollment underutilization.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006-07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06-07 budget authorization by approximately \$46 million. This rule will provide for more efficient use of the program's limited funding.

Publication Date: April 1, 2007
Effective Date: April 1, 2007
Expiration Date: August 29, 2007

Scope Statements

Commerce

Subject

The rules affects chs. Comm 2, 5, 20, 21, 60, 61 and 82, relating to erosion and sediment control and storm water systems.

Objective of the Rule

In order to comply with the statutory mandate for inspection of erosion control activities and structures at construction sites as written in s. 101.1205 (3), Wis. Stats., the objective of the proposal is to update the department's administrative rules relating to erosion and sediment control and storm water management while primarily focusing on inspection and enforcement. This code update may result in one or more rule packages to be presented for public hearings, and may include minor changes to other department rules relating to erosion and sediment control and storm water management.

Policy Analysis

Chapters Comm 2, 20, 21, 60 and 61 currently cover erosion and sediment control and storm water management on building sites. Comm 82 includes requirements for plumbing post construction storm systems. Chapter Comm 5 covers credentials issued by the department. The current rules of Chapters Comm 21 and 60 include references to many standards shared with the department of natural resources (DNR) and reflect the shared responsibility for erosion and sediment control and storm water management.

The erosion and sediment control and storm water management code has been updated with an effective date of April 1, 2007. The April 1, 2007 revision implements Federal requirements contained in Phase II of the Clean Water Act. This code project will update administrative processes to increase effective enforcement and implementation of existing standards and may also update erosion and sediment control and storm water management requirements to reflect changing technology.

The alternative of not updating these chapters would result in administrative rules that are not consistent with currently recognized national standards and practices related to erosion and sediment control and storm water management and to impede progress concerning the effectiveness of department inspection and enforcement processes.

Statutory Authority

Sections 101.02 (15) (h) to (j), 101.1205, 101.653 and 145.02, Stats.

Entities Affected by the Rule

This rule will affect any entity that is involved with the erosion and sediment control and storm water management industry.

Comparison with Federal Regulations

Under the Federal Clean Water Act, the Environmental Protection Agency has established erosion and sediment control regulations, 40 CFR Parts 9, 122, 123 and 124, for land disturbing activities involving one or more acres at construction sites. The regulations establish a permitting

process under the National Pollutant Discharge Elimination System, NPDES, that may be implemented by state jurisdictions. The regulations require the design, implementation and maintenance of best management practices to improve water quality by reducing pollutants in storm water runoff.

The Department of Natural Resources under chapter NR 216 implements the EPA permitting process mandate in Wisconsin. Under section NR 216.42 (4), the Department of Natural Resources recognizes commercial building construction falling under Department of Commerce rules as complying with the Wisconsin Pollutant Discharge Elimination System permitting. That recognition in turns helps to achieve the state's implementation of the EPA permitting process for construction site erosion control.

Estimate of Time Needed to Develop the Rule

The department estimates that it will take approximately 500 hours to develop this rule. This time includes reviewing the current codes and related DNR and federally-accepted standards and facilitating meetings to assess options for inspection and enforcement, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The department will assign existing staff to perform the review and develop the rule changes. There are no other resources necessary to develop the rule.

Commerce

Subject

The rules affect chs. Comm 5 and 33, relating to passenger ropeways, tramways, lifts, tows, and conveyors.

Objective of the Rule

The objective of the rule is to update Wis. Adm. Code ch. Comm 33, Passenger Ropeways, to reflect current national standards, and to evaluate administrative and enforcement aspects of the program which may include credentialing of inspectors.

Policy Analysis

Chapter Comm 33 establishes minimum technical standards for the design, construction, installation, operation, inspection and maintenance of aerial tramways, aerial lifts, surface lifts and rope tows. The code currently incorporates by reference the 1999 edition of the American National Standards Institute (ANSI) B77.1, Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors – Safety Requirements. The rule project will update the chapter and will evaluate adopting by reference the 2006 edition of the ANSI B77.1 standard.

The alternative of not revising the code would result in rules not being up-to-date with current national standards.

Statutory Authority

Sections 101.02 (15) (h) to (j), 101.17 and 101.19 (1) (b), Stats.

Entities Affected by the Rule

The rule will affect any entity, private or public, that owns and operates existing aerial tramways, aerial lifts, surface lifts

and tows. The rule will also affect any entity which proposes to design and install a new aerial tramway, aerial lift, surface lift or tow.

Comparison with Federal Regulations

An Internet-based search for “passenger ropeways”, “aerial lifts”, and “ski lifts” in the *Code of Federal Regulations and the Federal Register* did not identify any existing or proposed federal regulations that address these topics.

Estimate of Time Needed to Develop the Rule

The department estimates approximately 300 hours will be needed to perform the review and develop any needed rule changes. This time includes forming and meeting with an advisory council, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The department will assign existing staff to perform the review and develop the rule changes, and no other resources will be needed.

Natural Resources

Subject

The rules affect chs. NR 405, 407, and 408, relating to federal changes to air permit programs affecting ethanol production facilities and other changes for clarity.

Objective of the Rule

The Bureau of Air Management proposes to proceed with the development of rules to amend the definition of “major stationary source” in s. NR 405.02(22)(a), such that ethanol production facilities that produce ethanol by natural fermentation, (those included in NAICS codes 325193 or 312140), are not included in the Chemical Processing Plant category. The other changes are to ss. NR 405.07(4)(a)20., 407.02(4)(b) and 408.02(21)(e), which will state that fugitive emissions from these ethanol production facilities will no longer be included in determining whether a facility is considered a major source. This rule package is initiated because of similar federal rule changes published May 1, 2007.

In addition, a federal rule clarifying two elements of the major source permitting program was promulgated on January 6, 2004. The first is the addition of a definition of Replacement Unit and the second clarifies a component of the emission calculation used when determining emissions under a plantwide applicability limitation (PAL). US EPA has required permitting agencies to add these elements during the next reopening of the permit program regulations.

Policy Analysis

Currently fuel ethanol production facilities are considered as a chemical processing plant which is one of the major stationary source categories under federal regulations. As such if the potential to emit any of the criteria pollutants exceeds 100 tons per year, the facility is considered to be a major source under the Prevention of Significant Deterioration (PSD) Program. Moreover, the fugitive emissions from such a facility are included when the major source determinations are made for these plants. After this proposed rule change, the major source applicability threshold will be 250 tons per year and the fugitive emissions will not be included when the major source determinations are made for these plants under the PSD program. The change will not have an impact on the Title V operation permit program’s or the nonattainment area new source review

program’s major source emission level; however, it will no longer require fugitive emissions to be included as a part of the calculation of emissions.

The inclusion of a definition of replacement unit and the PAL emission calculation clarification within ch. NR 405 and 408 will not impact existing policies since the term is currently not defined in those chapters. The addition of a replacement unit definition will clarify the use of the term as it applies to emission unit replacement in determining how emissions are calculated in determining applicability of the chapters to plant modifications. The proposed PAL related change will clarify the calculation of allowable emission rates under a PAL.

Statutory Authority

Sections 227.11 (2) (a), 285.11 (1), (6) and (16), Stats.

Entities Affected by the Rule

For the ethanol rule, the groups likely to be impacted or interested in the issue include, but are not limited to, ethanol production facilities and local citizens. For the federal rule clarification, the groups likely to be impacted or interested in the issue include, but are not limited to, major sources of emissions in a variety of industries.

Comparison with Federal Regulations

Currently fuel ethanol production facilities are considered as a chemical processing plant which is one of the major stationary source categories under federal regulations. As such if the potential to emit any of the criteria pollutants exceeds 100 tons per year, the facility is considered to be a major source under the Prevention of Significant Deterioration (PSD) Program. Moreover, the fugitive emissions from such a facility are included when the major source determinations are made for these plants. After this proposed rule change, the major source applicability threshold will be 250 tons per year and the fugitive emissions will not be included when the major source determinations are made for these plants under the PSD program. The change will not have an impact on the Title V operation permit program’s or the nonattainment area new source review program’s major source emission level; however, it will no longer require fugitive emissions to be included as a part of the calculation of emissions.

All of the changes proposed under this rule package would make Wisconsin’s regulations identical to the federal regulations in the areas described.

Estimate of Time Needed to Develop the Rule

Approximately 150 staff hours of time will be needed to develop the rule.

Agency Contact Persons

Paul Yeung, P.O. Box 7921, Madison, WI 53707, Telephone number: (608) 266-0672; e-mail address: paul.yeung@wisconsin.gov

Jeffrey Hanson, P.O. Box 7921, Madison, WI 53707, Telephone number: (608) 266-6876; e-mail address: jeffreyc.hanson@wisconsin.gov

Regulation and Licensing

Subject

Revisions to s. RL 15.04 relating to retention of records to provide additional clarification relating to the ability to retain records in an electronic format, updating and clarifying ch. RL 24, Conduct and Ethical Practices for Real Estate Licensees, and creating discipline for licensees who do not

respond to information requests from the Real Estate Board or Department of Regulation and Licensing.

Objective of the Rule

To provide additional clarification to the rules relating to the ability to retain records in an electronic format, update and clarify Ch. RL 24 to reflect recent statutory changes and provide additional clarification regarding licensee duties, and allow the board to impose discipline for failure of a licensee to respond to the Real Estate Board or department so as to encourage the submission of requested information during an investigation.

Policy Analysis

Existing rules relating to the retention of certain records that are used in the practice of real estate can be found in s. RL 15.04. Section RL 15.04 requires a real estate broker to retain for at least 3 years exact copies of documents and correspondence utilized in connection with any transaction. These documents and correspondence must be made available to the Department of Regulation and Licensing for inspection and copying. Chapter RL 24 provides conduct and ethical practice requirements for real estate licensees, which would be updated and clarified. Discipline would be created for failure to respond to the Real Estate Board or the department, which currently does not exist, so as to encourage the submission of requested information during investigations.

Statutory Authority

Sections 227.11 (2), 452.04 (2) and 452.07, Stats.

Entities Affected by the Rule

Real estate licensees.

Comparison with Federal Regulations

There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Estimate of Time Needed to Develop the Rule

250 hours.

Tax Appeals Commission

Subject

The Tax Appeals Commission proposes to undertake a comprehensive review and revision of its rules concerning procedures.

Policy Analysis

The Commission proposes to significantly revise its rules of procedure to provide definitions of terms used in the rules, to correct and update outdated statutory references, to conform to the Commission's established practices, to remove internal inconsistencies, to remove requirements that are unnecessarily burdensome, to improve the ease of understanding, to adapt to changes in communications technology and to provide methods of dealing with violations of the rules.

Statutory Authority

Section 227.11 (2), Stats.

Entities Affected by the Rule

The entities that will be affected by the proposed rules are the Department of Revenue, the Department of Transportation and Wisconsin taxpayers who file petitions with the Tax Appeals Commission.

Comparison with Federal Regulations

The Commission operates in a similar manner to the U. S. Tax Court and some of the proposed changes in procedures will make the Commission rules more consistent with the procedures of the U. S. Tax Court.

Estimate of Time Needed to Develop the Rule

The Commission estimates that it will take approximately 200 hours of the commissioners' time to draft the proposed rules.

Transportation

Subject

The rules affect chs. Trans 137, 138, and 139, relating to motor vehicle dealer franchise operations, record keeping, and trade practices.

Objective of the Rule

Several amendments are necessary to accommodate evolving industry environment and to clarify explicitly DOT's interpretation of statutory definitions.

Policy Analysis

This rule will explicitly define in chs. Trans 137, 138 and 139, a "title" as a title in Chapter 342, Stats. While common understanding of the term has long prevailed, this will make the meaning clear.

Under Ch. 218, Stats., this rule will do the following:

- Create a definition in Trans 139 of "bird dogging," i.e., referral selling, and explicitly prohibit this practice. While this practice is prohibited in statute, which governs dealer behavior, DOT believes it would be appropriate to repeat the statutory prohibition in rule, and elaborate on statutory definition.
- In Trans 138, clearly allow multi-location dealership records to be kept at a single location, with proper availability for inspection. This is implicit in rule reference to a dealership, and is currently allowed by DMV policy, but it would be appropriate to state explicitly, and to clarify what constitutes a single dealership with multiple locations as opposed to separate dealerships.
- Amend the Trans 137 definition of "used motor vehicle" to include rental or leased vehicles with 4,000 or fewer miles that have been damaged. The current definition effectively treats these vehicles as "new" for the purpose of needing a franchise to sell the vehicles. This has presented difficulties for rental and leasing companies that need to dispose of damaged vehicles.
- Amend Trans 139 to allow, instead of currently prohibit, the use of motor vehicle pricing guides (such as Kelly Blue Book or Edmonds guide) as price comparison in advertising used vehicle prices. This has been considered an unfair trade practice because price guides may not sufficiently account for vehicle condition. However, these pricing guides are readily accessible on the internet and in print, and consumers often make use of them. DMV proposes to couple allowing use of price guides with requirements for dealer disclosure of vehicle condition sufficient to protect a customer from making false inference about the vehicle's actual sales price and thus being taken in by false advertising.
- Amend the Trans 138 requirement that dealers have in their possession the title for any vehicles they offer for sale, to exclude title of a manufacturer buy-back under the

lemon law, instead allowing a dealer to have in its possession a copy of the title. Section 218.0171(2)(d), Stats., requires that no manufacturer buy-back may be sold or leased to a new customer unless the manufacturer buy-back condition is fully disclosed to that customer. To protect themselves from liability, manufacturers have developed a disclosure form that they require dealers to submit to them, before they will release the title to the dealer. In the meantime, the dealer keeps a copy of the title in its possession. DMV allows this by policy, and DMV wishes to clarify this in rule.

Statutory Authority

Sections 85.16 (1), 218.0152 and 227.11, Stats.

Entities Affected by the Rule

Wisconsin motor vehicle dealers, motor vehicle rental and leasing companies, and motor vehicle purchasers.

Comparison with Federal Regulations

No federal regulations govern the activities to be regulated by the proposed rule.

Estimate of Time Needed to Develop the Rule

DOT estimates that 80 hours staff time will be required.

Submittal of Rules to Legislative Council Clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Agriculture, Trade and Consumer Protection

On July 12, 2007, the Department of Agriculture, Trade and Consumer Protection submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. ATCP 99, 100, and 101, relating to agricultural producer security.

Agency Procedure for Promulgation

The department will hold public hearings. The Division of Trade and Consumer Protection is primarily responsible for this rule.

Contact Person

Kevin LeRoy
(608) 224-4928
kevin.leroy@wisconsin.gov

Commerce

On July 9, 2007, the Department of Commerce submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect chs. Comm 5 and 82, relating to administrative forfeitures and tracer wire for non-metallic pipe.

Agency Procedure for Promulgation

The Safety and Buildings Division is responsible for the promulgation of the rule. A public hearing is required.

Contact Person

Lynita Docken, Program Manager
(608) 785-9349
ldocken@commerce.state.wi.us

Employee Trust Funds

On July 2, 2007, the Department of Employee Trust Funds submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. ETF 20, relating to the status of a non-annuitant Wisconsin Retirement System participant at death, for purposes of determining the applicable death benefits.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 14, 2007, at 10:30 A.M. in the downstairs Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin.

The Department's Chief Counsel, Robert Weber, is primarily responsible for this rule.

Contact Person

Robert Weber, Chief Counsel
(608) 266-5804

Insurance

On July 6, 2007, the Office of the Commissioner of Insurance submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect ch. Ins 2, relating to use of the 2001 CSO preferred class structure mortality table in determining reserve liabilities.

Agency Procedure for Promulgation

A public hearing will be held on August 22, 2007.

Contact Person

A copy of the proposed rule may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, Office of the Commissioner of Insurance, at (608) 264-8110. For additional information, please contact James W. Harris at (608) 267-2833 or e-mail at James.Harris@oci.state.wi.us in the OCI Legal Unit.

Natural Resources

On July 13, 2007, the Department of Natural Resources submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 19 and 20, relating to control of fish diseases and invasive species.

Agency Procedure for Promulgation

Public hearings are scheduled for August 14, 15, 16, 20, and 23, 2007.

Contact Person

Bill Horns
Bureau of Fisheries Management and Habitat Protection
(608) 266-8782

Natural Resources

On July 13, 2007, the Department of Natural Resources submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. NR 25, relating to commercial fishing for yellow perch in Green Bay.

Agency Procedure for Promulgation

A public hearing is scheduled for August 13, 2007.

Contact Person

Bill Horns
Bureau of Fisheries Management and Habitat Protection
(608) 266-8782

Natural Resources

On July 13, 2007, the Department of Natural Resources submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. NR 406, 407, and 445, relating to a timeline for implementation of air permit and hazardous air pollutant requirements for emissions associated with agricultural waste and minor technical corrections.

Agency Procedure for Promulgation

A public hearing is scheduled for September 10, 2007.

Contact Person

Eileen Pierce
South Central Regional Air and Waste
eileen.pierce@wisconsin.gov

Transportation

On July 12, 2007, the Department of Transportation submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. Trans 130, relating to special identification cards and special registration plates for physically disabled.

Agency Procedure for Promulgation

A hearing is required and is scheduled for August 15, 2007. The Division of Motor Vehicles, Bureau of Vehicle Services is the unit responsible for promulgation of the rules.

Contact Person

Julie A. Johnson, Paralegal
(608) 266-8810

Workforce Development

On July 12, 2007, the Department of Workforce Development submitted proposed rules to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: Section 49.155 (1d), as affected by 2005 Wis. Act 165, and s. 227.11 (2) (a), Stats.

The proposed rules affect ch. DWD 55, relating to child care certification and affecting small businesses.

Agency Procedure for Promulgation

A public hearing is required and will be held on August 15, 2007. The DWD Division of Workforce Solutions is the unit responsible for the promulgation of the rules.

Contact Person

Elaine Pridgen
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Rule-Making Notices

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 07-067]

(Reprinted from 7/15/07 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapters ATCP 140, 141, 147 and 148, Wis. Adm. Code, relating to the Marketing Order Program and Wisconsin Commodities organized under ATCP 140. Those commodities being directly affected are Cherries, Ginseng and Mint.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Wednesday, August 29, 2007 for additional written comments. Comments may be sent to the Division of Agricultural Development at the address below or by e-mail to noel.favia@datcp.state.wi.us.

Copy of Rule

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Development, Marketing Order Program, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5140 or emailing noel.favia@datcp.state.wi.us.

Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

Comments

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by August 1, 2007, by writing to Noel Favia, Division of Agricultural Development, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5140. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations

Tuesday, August 9, 2007

7:00 p.m. to 8:00 p.m.

Marathon County, UW Extension Office

212 River Drive, Rooms 1 & 2

Wausau, WI 54403

Tuesday, August 14, 2007

1:00 p.m. to 2:30 p.m.

Wisconsin Dept. of Agriculture

1st Floor, Board Room

2811 Agriculture Drive

Madison, WI 53708

Wednesday, August 15, 2007

7:00 p.m. to 8:00 p.m.

Wisconsin Peninsular Research Station

Conference Room

4312 Hwy 42

Sturgeon Bay, WI 54235

Analysis Prepared by the Dept. of Agriculture, Trade and Consumer Protection

Statutory authority

Sections 93.07 (1), and 96.15, Stats.

Statutes interpreted

Ch. 96, Stats.

Agency authority

DATCP has general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP is specifically authorized, under s. 96.15, Stats., to adopt rules to administer the marketing order program under ch. 96, Stats.

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers Wisconsin's agricultural marketing order program under ch. 96, Stats. DATCP may adopt marketing orders for Wisconsin agricultural commodities, with the approval of affected commodity producers. DATCP has adopted marketing orders for cherries, cranberries, corn, milk, mint, soybeans, ginseng and potatoes.

A marketing order imposes assessments on commodity producers. Affected producers elect a marketing board, which spends assessment revenues for purposes specified in the marketing order. Marketing orders may be used to finance market development, research and education. DATCP monitors marketing board activities for compliance with applicable law, including the marketing order.

DATCP has adopted general rules to govern the operation of marketing orders and marketing boards. DATCP must also adopt marketing orders as rules. Affected producers must approve (by referendum) the adoption, amendment or repeal of a marketing order. DATCP may bill a marketing board for administrative services provided to the marketing board.

Rule contents

This rule does all of the following:

- Amends current rules (ATCP 140) governing all marketing order referenda and marketing board elections:
 - Authorizes, but does not require, DATCP to conduct referenda and elections by electronic mail.
 - As an alternative to mailing ballots to all eligible producers in a marketing board election (but not a marketing order referendum), authorizes DATCP to notify producers how they may obtain election ballots.
- Amends the cherry marketing order (ATCP 141) to eliminate the requirement of an advisory referendum every 4 years (non-binding advisory referendum asks producers whether they wish to continue the cherry marketing order). A marketing order may be repealed at

any time, with or without a non-binding advisory referendum, if the repeal is approved in a formal binding referendum of affected producers.

- Repeals the mint marketing order (ATCP 147).
- Amends the ginseng marketing order (ATCP 148):
 - Eliminates the current annual producer assessment based on sales, and replaces it with an assessment based on acres in ginseng production.
 - The ginseng marketing board must annually determine the assessment rate, which may not exceed \$150 per acre in ginseng production. The ginseng board may require affected producers to report acreage in production.
 - The ginseng board may verify reported acreage by aerial photography or other reliable means.
 - The ginseng board must annually notify each producer of the assessment amount owed by that producer.
 - DATCP no longer determines assessment amounts, but may audit the ginseng board's determination of assessment amounts.
 - Eliminates the requirement of an advisory referendum every 5 years (advisory referendum asks producers whether they wish to continue the ginseng marketing order). A marketing order may be repealed at any time, with or without a non-binding advisory referendum, if the repeal is approved in a formal binding referendum of affected producers.
- Makes other minor changes to current rules.

The voting requirement for the amendments to the cherry, ginseng and mint marketing orders as provided in s. 96.08 (1) (b) 3., Stats., is that the applicable referendum must be approved by not less than 50% of the producers voting provided that 50% of the producers on the established list vote in the referendum. For each of the cherry, ginseng and mint marketing orders, the voting requirement identified in s. 96.08 (1) (b) 3., Stats., was used to adopt the original marketing order.

Business impact

Businesses Affected. In a general sense, this rule affects producers of all agricultural commodities that are covered by an agricultural marketing order or that may be covered in the future. This rule more specifically affects cherry, mint and ginseng producers. Many of the affected businesses are "small businesses." The effects of this rule are generally insignificant.

Agricultural producers; general. This rule gives DATCP more procedural flexibility related to the conduct of marketing order referenda and marketing board elections. Under this rule:

- DATCP may use electronic mail to conduct referenda and elections (DATCP is not required to use electronic mail).
- In a marketing board election (but not a marketing order referendum), DATCP may notify producers how to obtain ballots rather than actually mailing ballots to all producers.

DATCP may use these alternative procedures where appropriate. In appropriate circumstances, the alternative procedures may be at least as effective in encouraging producer participation, and may be substantially cheaper. Cost savings may be passed on to marketing boards and individual producers. Cost savings to individual producers will not be significant.

Mint Producers. This rule repeals the current mint marketing order, and eliminates the producer assessments associated with that order. There may be some cost savings to individual mint producers, but the savings will be insignificant. Currently, there are only 14 mint producers in Wisconsin.

Cherry Producers. This rule repeals a current marketing order provision that requires an advisory referendum of cherry producers every 4 years, to determine whether they support continuation of the marketing order. The repeal will save some costs for the marketing board and affected producers. The savings for individual producers will not be significant.

Ginseng Producers. This rule requires ginseng marketing order assessments based on acres in production, rather than sales. Sales assessments are difficult to collect, because most buyers are outside the United States. This rule will charge assessments based on reported acres in production (verified by aerial photography or other reliable means). Assessments based on acres in production will be more fair and reliable. Some individual assessments will go up, but others will go down. Overall assessments will increase, but there will not be a major financial impact on ginseng producers.

This rule repeals a current marketing order provision that requires an advisory referendum of ginseng producers every 5 years, to determine whether they support continuation of the marketing order. The repeal will save some costs for the marketing board and affected producers. The savings for individual producers will not be significant.

Federal regulation

The United States Department of Agriculture (USDA) administers an agricultural marketing order program, under which USDA has broad authority to regulate prices and production, as well as to charge assessments for market development, promotion, research and education. USDA has adopted marketing orders for some of the same commodities covered by Wisconsin marketing orders (including potatoes, corn, milk and soybeans). However, the state marketing orders do not directly duplicate or conflict with the federal marketing orders.

Surrounding state regulation

Surrounding states have marketing orders for some, but not all, of the commodities covered by Wisconsin marketing orders. For example, Illinois, Iowa, Minnesota and Michigan have marketing orders for corn. Illinois and Iowa also have marketing orders for soybeans, milk and other commodities. Nearly all United States ginseng is grown in Wisconsin, so no other states have ginseng marketing orders.

Fiscal Estimate

The proposed rules will not have a significant fiscal impact on DATCP and will have no fiscal effect on local government.

Notice of Hearings

Agriculture, Trade and Consumer Protection [CR 07-073]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapters ATCP 99, 100, and 101, Wis. Adm. Code, relating to the Agricultural Producer Security.

DATCP will hold three public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the

public hearings, the hearing record will remain open until Wednesday, October 31, 2008 for additional written comments.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by August 6, 2007, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4928. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Submission of Comments and Copy of Rule

Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to kevin.leroy@wisconsin.gov or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4928 or emailing kevin.leroy@wisconsin.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing Dates and Locations

Thursday, **August 16, 2007**, 2:00 p.m.

DATCP Northwest Regional Office
3610 Oakwood Hills Pkwy
Eau Claire, WI 54701-7754

Tuesday, **August 21, 2007**, 2:00 p.m.

DATCP Northeast Regional Office
Room 152A
200 N Jefferson St.
Green Bay, WI 54301

Wednesday, **August 22, 2007**, 10:00 a.m.

Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Dr.
Board Room (CR-106)
Madison, WI 53718-6777

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Wisconsin's agricultural producer security program helps protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors").

Contractors must be licensed by the Department of Agriculture, Trade and Consumer Protection ("DATCP") and pay license fees. Most contractors must also pay assessments to an agricultural producer security fund ("fund"). In the event of a contractor default, DATCP may compensate producers from the fund.

This rule changes current grain dealer, grain warehouse keeper and vegetable contractor license fees. This rule changes current fund assessments for grain dealers (deferred payment assessment) and grain warehouse keepers, and changes required *minimum* fund assessments for grain

dealers, grain warehouse keepers, milk contractors and vegetable contractors. This rule does not make any other significant changes in current contractor regulations.

Statutory authority

Sections 93.07(1), 126.81 and 126.88, Stats.

Statutes interpreted

Sections 126.81 and 126.88, States.

Agency authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has authority, under ss. 126.81 and 126.88, Stats., to establish license fees and fund assessments under the agricultural producer security program. Chapter 126, Stats., establishes license fees and fund assessments, but authorizes DATCP to change those license fees and fund assessments by rule.

Under current law, DATCP *must* modify fund assessments whenever fund balances fall outside a specified range. The fund balance attributed to the grain warehouse keeper sector currently falls below the required minimum of \$200,000. Therefore, DATCP *must* modify fund assessments for grain warehouse keepers. DATCP is authorized, but not required, to modify fund assessments for other contractors.

Background

DATCP administers the agricultural producer security program under ch. 126, Stats. DATCP has adopted rules to implement the program. The rules are contained in chs. ATCP 99-101, Wis. Adm. Code. Under current law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration and response to contractor financial defaults and law violations.
- Most contractors ("contributing contractors") must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust, for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund. Fund assessments are like insurance premiums, and are based on contractor size, financial condition and risk practices.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue ("GPR") and contractor license fees. However, the 2003-2004 Biennial Budget Act eliminated virtually all GPR funding for program administration. That made it necessary to transfer staff from GPR funding to license fee funding. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors (such as statewide union contracts for accountants and auditors) that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$350,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and the program has a negative cash balance (January 1, 2007) of more than \$50,000.

Deficits in the grain and vegetable administration accounts are currently being covered by milk contractor license fee revenues and by fund assessment revenues that would

normally go to the producer security fund. That unfairly affects milk contractors and reduces fund coverage for *all* producers (grain, milk and vegetable).

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration. This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, the total of all contractor payments under the producer security (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline. This rule will not have any significant impact on contractors' overall business costs.

Rule contents

Grain Dealer License Fees

Current Fees. Under current law, a grain dealer must pay the following annual license fees and surcharges:

- A license processing fee of \$25.
- One of the following fees:
 - \$500 if the grain dealer purchased at least \$500,000 worth of producer grain in this state during the grain dealer's last completed fiscal year.
 - \$200 if the grain dealer purchased at least \$50,000 but less than \$500,000 worth of producer grain in this state in the grain dealer's last completed fiscal year.
 - \$50 if the grain dealer purchased less than \$50,000 worth of producer grain in this state in the grain dealer's last completed fiscal year.
- A \$225 fee per business location in excess of one location (but only if the grain dealer purchased \$500,000 worth of producer grain in this state during the grain dealer's last completed fiscal year).
- A \$45 fee per truck, in excess of one truck, that the grain dealer uses to haul grain in this state.
- A \$425 surcharge if the grain dealer submits a required financial statement that is not an audited financial statement.
- A \$500 surcharge if the grain dealer operated without a license at any time during the preceding year.
- A \$100 surcharge if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline.
- A \$100 surcharge if the grain dealer failed to file a license renewal application by the license expiration date of August 31.

Proposed fees. This rule changes the calculation of grain dealer license fees. Under this rule, a grain dealer must pay the following fees and surcharges:

- A license processing fee of \$25 (same as current law).
- A fee equal to the lesser of the following amounts:
 - 0.175 cents per bushel of producer grain that the grain dealer procured in this state during the grain dealer's last completed fiscal year (the grain dealer must report the number of bushels of grain procured).
 - \$15,000.
- \$100 per business location in excess of one location (*regardless* of the grain dealer's annual grain purchase amount).

- A surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year (same as current law).
- A surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline (same as current law).
- A surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31 (same as current law).

This rule *eliminates* the following current grain dealer fees and surcharges:

- \$45 fee per truck.
- \$425 surcharge for submitting a required financial statement that is not an audited financial statement.

Grain Dealer Fund Assessments

Current Assessments. Under current law, a contributing grain dealer must pay the following annual fund assessments:

- A *basic assessment*, based on a formula that considers the total dollar value of Wisconsin grain purchased in the grain dealer's last completed fiscal year, the grain dealer's current ratio, and the grain dealer's debt-to-equity ratio. Other things equal, the formula yields declining basic assessments over time.
- A *deferred payment assessment*, if the grain dealer uses deferred payment contracts (which carry higher financial risk). The assessment equals total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by the following rate:
 - 0.0035 if the grain dealer has contributed to the fund for less than 5 years.
 - 0.002 if the grain dealer has contributed to the fund for 5 years or more.

Under current law, there is a minimum total assessment of \$20 (basic assessment plus deferred payment assessment).

Proposed Assessments.

- **Basic assessment.** This rule does not change the calculation of a grain dealer's basic fund assessment (the formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on volume (applies only to basic assessment):
 - \$20 for grain dealers who procured less than \$500,000 worth of Wisconsin grain in the preceding license year.
 - \$200 for grain dealers who procured at least \$500,000 but less than \$3,000,000 worth of Wisconsin grain.
 - \$500 for grain dealers who procured Wisconsin grain worth \$3,000,000 or more.
- **Deferred payment fund assessment.** Under this rule, the deferred payment assessment equals the grain dealer's total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by 0.0035 (regardless of how long the grain dealer has contributed to the fund). There is no minimum deferred payment assessment.

Grain Warehouse Keeper License Fees

Current fees. Under current law, a grain warehouse keeper must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25, plus an additional nonrefundable processing fee of \$25 for each separate warehouse in excess of one warehouse.
- An inspection fee based on the combined capacity of the grain warehouse keeper's warehouses:

Inspection Fee	Combined Warehouse Capacity (Bushels)
\$ 500	Less than 150,000
\$ 550	At least 150,000 but less than 250,000
\$ 600	At least 250,000 but less than 500,000
\$ 650	At least 500,000 but less than 750,000
\$ 700	At least 750,000 but less than 1,000,000
\$ 800	At least 1,000,000 but less than 2,000,000
\$ 900	At least 2,000,000 but less than 3,000,000
\$1,000	At least 3,000,000 but less than 4,000,000
\$1,100	4,000,000 or more.

- A supplemental inspection fee of \$275 for each grain warehouse that the grain warehouse keeper operates in excess of one warehouse.
- A surcharge of \$500 if the grain warehouse keeper operated without a license at any time during the preceding year.
- A surcharge of \$100 if the grain warehouse keeper failed to file an annual financial statement by the applicable deadline.
- A surcharge of \$100 if the applicant fails to renew a license by the license expiration date of August 31.

Proposed Fees. This rule changes the calculation of grain warehouse *inspection* fees, but makes no other changes to current grain warehouse keeper license fees or surcharges. The current inspection fee schedule (see above) is replaced by a formula. Under the new formula, a grain warehouse keeper pays an annual inspection fee equal to the lesser of the following amounts:

- The warehouse keeper's highest daily grain obligations to depositors (in bushels) in the preceding license year, multiplied by 0.3 cent per bushel.
- \$15,000.

Grain Warehouse Keeper Fund Assessments

Current Assessments. Under current law, a grain warehouse keeper must pay an annual fund assessment based on a formula that considers the warehouse keeper's licensed storage capacity, current ratio and debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments. Under this rule, a grain warehouse keeper must pay an annual fund assessment that is 50% higher than the assessment generated by the current formula (the formula does not change, and continues to yield declining assessments over time). There is a new minimum assessment based on storage volume:

- \$20 for grain warehouse keepers whose storage capacity is less than 300,000 bushels.
- \$100 for grain warehouse keepers whose storage capacity is at least 300,000 but less than 500,000 bushels.
- \$250 for grain warehouse keepers whose storage capacity is 500,000 bushels or more.

Milk Contractor License Fees

This rule makes no changes to current milk contractor license fees.

Milk Contractor Fund Assessments

Current Assessments. Under current law, a contributing milk contractor must pay an annual fund assessment based on a formula that considers the milk contractor's total Wisconsin milk payroll obligations for the contractor's last completed fiscal year, the milk contractor's current ratio, and the milk

contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments. This rule does not change the calculation of milk contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on the contractor's total Wisconsin milk payroll obligations in the contractor's last completed fiscal year:

- \$20 for milk contractors with annual Wisconsin milk payroll obligations of less than \$1,500,000.
- \$200 for milk contractors with annual Wisconsin milk payroll obligations of at least \$1,500,000 but less than \$6,000,000.
- \$500 for milk contractors with annual Wisconsin milk payroll obligations of \$6,000,000 or more.

Vegetable Contractor License Fees

Current Fees. Under current law, vegetable contractors must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- A fee of \$25 plus 5.75 cents for each \$100 in Wisconsin vegetable procurement contract obligations (to vegetable producers) that the contractor incurred during the contractor's last completed fiscal year. This fee does not apply to "nonparticipating processing potato buyers."
- A \$500 fee if the vegetable contractor is a "nonparticipating processing potato buyer."
- A \$500 surcharge if the vegetable contractor operated without a license at any time during the preceding year.
- A \$100 surcharge if, during the preceding year, the vegetable contractor failed to file a required financial statement by its due date.
- A \$100 surcharge if the vegetable contractor failed to file a license renewal application by the license expiration date of January 31.

Proposed fees. This rule increases the license fee component that is based on annual Wisconsin vegetable procurement contract obligations. It increases that fee component to \$25 plus 8.75 cents (currently 5.75 cents) for each \$100 in contract obligations.

This rule replaces the current \$500 fee for "nonparticipating potato buyers" with a fee equal to the lesser of the following amounts:

- \$25 plus 8.75 cents for each \$100 in annual contract obligations (same as other vegetable contractors).
- \$2,000.

This rule makes no other changes to current vegetable contractor license fees or surcharges.

Vegetable Contractor Fund Assessments

Current Assessments. Under current law, a contributing vegetable contractor must pay an annual fund assessment based on a formula that considers the contractor's total vegetable procurement contract obligations during the contractor's last completed fiscal year, the contractor's current ratio, and the contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments. This rule does not change the calculation of vegetable contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on contract volume:

- \$20 for vegetable contractors with contract obligations of less than \$500,000.

- \$200 for vegetable contractors with contract obligations of at least \$500,000 and less than \$4,000,000.
- \$500 for vegetable contractors with contract obligations of \$4,000,000 or more.

Business Impact

Agricultural Producers

This rule will benefit Wisconsin producers of grain, milk and vegetables, by preventing the erosion of the producer security program that helps protect them against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively “contractors”).

This rule will generate enough license fee revenue to continue critical financial security monitoring activities, such as grain warehouse inspections and review of contractor financial statements. Without this rule, DATCP would have to curtail key monitoring activities that help control potentially catastrophic financial risks to producers and to the producer security fund.

This rule will also reverse the current diversion of fund assessment revenues from the agricultural producer security trust fund (to subsidize operating deficits in the grain and vegetable sectors). That will yield a slightly increased rate of fund growth which will, in turn, provide greater protection for producers in the event of a catastrophic contractor default.

This rule will not increase costs for agricultural producers, or have any significant impact on commodity prices paid to producers.

Contractors

This rule affects license fees and fund assessments paid by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors, but does not change other contractor regulations.

Current Cost to Contractors. Current license fees and fund assessments represent a *very* small share of overall contractor costs. For example:

- Current grain dealer license fees and fund assessments represent only about *11 hundredths of one percent* of the grain dealers’ annual Wisconsin grain procurement costs (\$672,000 in fees and fund assessments, compared to \$599 million in grain purchased from Wisconsin producers in FY 2005–06).
- Current grain warehouse keeper license fees and fund assessments represent less than *2 hundredths of one percent* of the grain warehouse keepers’ annual Wisconsin “cost of sales” (\$210,000 in fees and fund assessments, compared to about \$1.7 billion in “cost of sales” for FY 2005–06).
- Current milk contractor license fees and fund assessments represent only about *3 hundredths of one percent* of the contractors’ annual Wisconsin milk procurement costs (\$1.2 million in producer security license fees and fund assessments, compared to about \$3.5 billion paid for milk produced by Wisconsin farmers in FY 2005–06).
- Current vegetable contractor license fees and fund assessments represent only about *8 hundredths of one percent* of the contractors’ annual vegetable procurement costs (\$138,000 in producer security license fees and fund assessments, compared to \$170 million in procurement contract obligations to Wisconsin producers in FY 2005–06).

Current contractor license fees and fund assessments represent an even smaller share of *overall* contractor costs

(including costs for labor, buildings, equipment, debt service, overhead, etc., in addition to commodity procurement costs).

Declining Costs. Total contractor license fees and fund assessments will actually *decline* over the next few years, because of fee credits and declining formula rates built into the producer security law itself. This rule will reduce the rate at which overall contractor fees and fund assessments decline. But even with this rule, the total of all contractor license fees and fund assessments will be about *5% lower* in FY 2009–10 than in FY 2005–06 (other things equal).

Total license fees and fund assessments will decline in every business sector *except* the grain dealer and grain warehouse sector, where license fees and assessments will increase to pay a proportionate share of administrative costs and to provide a proportionate contribution to the producer security fund.

The following table shows *combined total license fees and fund assessments* by business sector for FY 2005–06. It also compares projected totals for FY 2009–10 *with* and *without* this rule:

	FY 2005–06	FY 2009–10* Without this rule	FY 2009–10* With this rule
Grain Dealers	\$672,000	\$395,000	\$674,000
Grain Warehouse Keepers	\$210,000	\$169,000	\$428,000
Milk Contractors	\$1,272,000	\$1,018,000	\$1,027,000
Vegetable Contractors	\$138,000	\$42,000	\$48,000
TOTAL	\$2,292,000	\$1,624,000	\$2,177,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

The projected decline in total license fees and fund assessments (with or without this rule) results from the following features built into the current producer security law (this rule will not change those features):

- License fee credits. If the fund balance contributed by an industry sector reaches a specified statutory threshold, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees). Contributing vegetable contractors are already enjoying credits that significantly reduce their license fees, and milk contractors began receiving credits in May, 2007. Those credits will dramatically reduce fees for contributing contractors, even when this rule is in effect.
- Falling assessment rates. Under the producer security law, fund assessment rates decline after a contractor has contributed to the fund for a specified number of years (4 to 6 years depending on contractor type and financial condition). Because the producer security fund is about five years old, most contributing contractors are now beginning to pay significantly lower fund assessments than they were a short time ago. That trend will continue, regardless of this rule.

Effects Vary Between Contractors. The impact of this rule may vary considerably between individual contractors within a business sector. License fees and assessments may be affected by a number of variables, including contractor size, contractor financial strength, contractor risk practices and commodity prices.

For many contractors, this rule will slow the rate at which the contractor’s fees and fund assessments would otherwise decline. Some contractors (especially grain warehouse

keepers) may have increased fees and fund assessments. For a few contractors, this rule will actually speed the reduction of fees and fund assessments. Many contractors (especially milk contractors) will be unaffected by this rule.

Federal regulations

There is no federal producer security program related to milk. The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA has informally proposed to regulate *grain dealer* activities (grain “merchandising”) by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet officially introduced its proposed regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to *grain dealers* who do not operate a warehouse.

There is a federal security program for vegetables. That security program is mainly limited to fresh market vegetables, and consists of a priority lien against vegetable-related assets. Wisconsin’s vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). Wisconsin’s program uses an indemnity fund, rather than a priority lien-type program. Unlike the *federal* priority lien program, a *state* priority lien program would not work because it would be preempted by federal bankruptcy law.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear. Overlap was reduced by recent Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

Surrounding states regulations

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default. The program is financed through industry fees and general tax revenues.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume and financial condition. Iowa and Illinois finance their programs through industry fees and general tax revenues.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin’s vegetable security program includes, but is not limited to, potatoes.)

- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.
- These programs are financed through industry fees and general tax revenues.

Fiscal Estimate

Under the agricultural producer security law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration, and response to contractor financial defaults and law violations.
- Most contractors (“contributing contractors”) must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust, for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue (“GPR”) and contractor license fees. However, as part of the GPR reductions in Act 33, the 2003–2005 Biennial Budget, 2.9 FTE positions and support costs were converted from GPR to the Agricultural Producer Security SEG fund. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors (such as statewide union contracts for accountants and auditors) that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$336,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000.

Deficits in the grain and vegetable administration sub accounts affect the total cash balance in Agriculture Producer Security Fund. This unfairly affects milk contractors since the total fund balance is incorporated into the formula that calculates their required security amounts and also affects the total funds available to pay a default.

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration (the fee increases for vegetable contractors will be largely offset by fee credits built into the producer security law). This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, total revenue derived from contractor payments under the producer security program (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline.

License Fee Revenues. The following table shows actual license fee revenues for FY 2005–06, compared to *projected* license fee revenue in FY 2009–10 (*with* and *without* this rule):

Total License Fee Revenues (Net of Contractor Credits)			
	FY 2005-06	FY 2009-10* Without this rule	FY 2009-10* With this rule
Grain Dealers	\$160,000	\$155,000	\$405,000
Grain Warehouse Keepers	\$159,000	\$149,000	\$393,000
Milk Contractors	\$363,000	\$159,000	\$159,000
Vegetable Contractors	\$16,000	\$5,000	\$8,000
TOTAL	\$698,000	\$468,000	\$965,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Projected milk and vegetable contractor license fee revenues for FY 2009-10 are affected, to a very considerable degree, by license fee credits built into the producer security law itself. When the producer security fund balance attributable to an industry sector (such as milk or vegetables) reaches a specified statutory "trigger" amount, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees).

Contributing vegetable contractors are already enjoying credits that significantly reduce their license fees, and milk contractors began receiving credits in May, 2007. Grain dealers and grain warehouse keepers do not yet qualify for these credits, because their fund contributions have not yet attained the required level (nor are they likely to do so prior to FY 2009-10).

Increased annual license fee revenues will be adequate to cover annual DATCP administrative costs. To the extent that annual license fee revenues exceed annual administrative costs, the additional revenues will offset the deficit in the administrative sub account.

Producer Security Fund; Assessment Revenues

The agricultural producer security fund currently has a balance of approximately \$7,493,000. No more than 60% of the fund balance can be paid out in any individual contractor default. The current fund balance is adequate to cover defaults by most, but not all, individual contractors. Continued fund growth will improve protection for producers, and minimize the need for supplementary security from contractors.

Contributing contractors pay fund assessments to finance the agricultural producer security fund. Annual assessment revenues will decline over the next few years (*with* or *without* this rule), because of fee credits and declining formula rates built into the producer security law. Annual assessment revenues will decline across all business sectors. This rule will slow (but not reverse) the projected decline of annual assessment revenues.

The following table shows actual fund assessment revenues for FY 2005-06, and *projected* assessment revenues for FY 2009-10 (*with* and *without* this rule):

Total Fund Assessment Revenues			
	FY 2005-06	FY 2009-10* Without this rule	FY 2009-10* With this rule
Grain Dealers	\$512,000	\$240,000	\$269,000
Grain Warehouse Keepers	\$51,000	\$20,000	\$35,000
Milk Contractors	\$909,000	\$859,000	\$868,000

Vegetable Contractors	\$122,000	\$37,000	\$40,000
TOTAL	\$1,594,000	\$1,156,000	\$1,212,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Cash in the assessment sub account currently covers the negative cash balances in the grain and vegetable administration sub accounts. That is slowing the rate of growth in the assessment sub account, and reducing the fund coverage for all producers (grain, milk, and vegetable). By correcting current grain and vegetable license fee revenue shortfalls, this rule will eliminate the current drain on the producer security fund. That, combined with the adjustment of fund assessment rates, will cause the fund balance to grow at a faster rate. Faster growth will increase protection for producers, and reduce supplementary security demands on contractors.

Without this rule, DATCP projects that the fund balance will grow to \$8,332,000 at the end of FY 2009-10. With this rule, DATCP projects that the fund balance will grow to \$9,425,000 by the end of FY 2009-10. Under this rule, the fund balance amount attributable to grain warehouse keeper assessments will build over several years toward the required statutory minimum (it currently falls short of the required minimum).

**Notice of Hearing
Commerce
(Licenses, Certifications, etc., Ch. Comm 5)
(Plumbing, Chs. Comm 81-87)
[CR 07-069]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.63 and 101.645, Stats., as affected by 2005 Wisconsin Act 200 the Department of Commerce will hold a public hearing on rules affecting chs. Comm 5 and 82, relating to administrative forfeitures for plumbing licensing violations, tracer wire for non metallic plumbing piping, and affecting small businesses.

Hearing Information

The public hearing will be held as follows:

<u>Date and Time:</u>	<u>Location:</u>
August 14, 2007 Tuesday at 10:30 a.m.	Conference Room 3C Thompson Commerce Center 201 West Washington Avenue Madison

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until August 27, 2007, to permit submittal of written comments from persons who are unable to attend the hearing or who wish to supplement testimony offered at the hearing. Written comments should be submitted to James Quast, at the Department of Commerce, P.O. Box 2689, Madison, WI 53701-2689, or Email at jim.quast@wisconsin.gov.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as

interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon a request from a person with a disability.

Analysis Prepared by Department of Commerce

Statutes interpreted

Section 145.12 (5), Stats., as affected by 2005 Wisconsin Act 182

Section 182.0715 (2r), Stats., as affected by 2005 Wisconsin Act 425

Statutory authority

Sections 145.02 (2) and 145.12 (5), Stats., as affected by 2005 Wisconsin Act 182

Related statute or rule

Sections 145.06 and 182.0715 (2r), Stats.

Agency authority

Section 145.02, Stats., grants the Department of Commerce general authority for protecting the health, safety and welfare of the public by establishing reasonable and effective standards for plumbing including the licensing of individuals to install plumbing. Section 145.06, Stats., specifies when and what types of plumbing licenses are needed for various plumbing activities. Section 145.12 (5), Stats., as affected by 2005 Wisconsin Act 182, allows the Department to directly assess forfeitures to individuals who violate the licensing provisions of s. 145.06, Stats. Section 182.0715 (2r), Stats., as affected by 2005 Wisconsin Act 425 requires the installation of tracer wire or some equally-effective means of locating non-metallic underground sewer and water laterals.

Summary of proposed rules

The proposed rules under chapter Comm 5 delineate the procedures for implementing the forfeiture assessments for plumbing licensing violations as allowed by 2005 Wisconsin Act 182. The proposed rules established a schedule for forfeitures based upon various situations and/or activities. The rules delineate a process for appealing a forfeiture assessment.

The proposed rules under chapter Comm 82 prescribe the requirements for installing tracer wire in order to locate non-metallic building sewers, private interceptor main sewers, water services and private water mains.

Federal regulation

There are no known federal regulations or proposed federal regulations that could be compared to the direct forfeiture provision. There are no known federal regulations or proposed federal regulations for the installation of the tracer wire installation provisions.

Surrounding states regulation

In Minnesota in addition to statutory fines and/or imprisonment, the laws allow the Minnesota Department of Health to administratively impose a penalty of up to \$10,000.00 for violation of its various licensing laws in that state. The state of Illinois in addition to other statutory penalties allows the Department of Public Health to assess administratively a civil penalty up to \$5,000 for unlicensed plumbing activity. Iowa has state registration for plumbing contractors, but only local licensing. Michigan has a penalty of \$1,000.00 per day with a maximum fine of \$5,000.00 for violations of its plumbing licensing regulations which may be pursued by the attorney general, local prosecuting attorney or an attorney representing the enforcing agency.

The state of Minnesota has a law requiring cities to create ordinances that include requirements for the installation of tracer wire or an equally-effective means of locating sewer and water laterals. The Minnesota tracer wire law requires that all nonconductive laterals installed after January 1, 2006 be accompanied by tracer wire. Illinois and Iowa have no known state-wide requirements for tracer wire. Michigan has adopted the International Plumbing Code which does not require any tracer wire installation.

The comparisons were completed via a web-search.

Factual data and analytical methodologies

The Department utilizes advisory councils in analyzing and developing proposed revisions to the Wisconsin Uniform Plumbing Code. The councils involved in the review of the proposed rules were the Plumbing Licensing Council and the Wisconsin Plumbing Code Advisory Council. These councils involve a variety of organizations whose memberships include small businesses and municipal staff. The Department utilizes these councils to gather information on potential impacts in complying with the administrative requirements of this proposal. A responsibility of council members is to bring forth concerns their respective organizations may have with the requirements, including concerns regarding economic impacts. (Copies of the council meetings summaries are on file in the Safety and Building Division.)

An economic impact report has not been required pursuant to s. 227.137, Stats.

Analysis and supporting documents used to determine effect on small business

The requirements relating to direct forfeiture under the credentialing code impact businesses of all sizes. The rules are intended to clarify and implement the s.145.12 (5), Stats.

The forfeiture could affect illegal plumbing businesses by the utilization of another enforcement tool to maintain code-compliant installations and therefore, public health and safety and the waters of the state.

The tracer wire rules will not significantly raise the cost of water and sewer installations.

Council members and representation

The proposed rules were developed with the assistance of the following Advisory Councils:

Plumbers Licensing Council:

Dave Jones, Master Plumber
Scott Hamilton, Journeyman Plumber
Lynita Docken, Department of Commerce

Plumbing Advisory Code Council:

Arthur J. Biesek, League of Wisconsin Municipalities
Thomas Boehnen, Chair, American Society of Plumbing Engineers
Patrick Casey, Wisconsin State AFL-CIO
Hallet Jenkins, City of Milwaukee
Dave Jones, Plumbing Contractor
Gary Kowalke, PHCC/MPA Wisconsin
Jeff Kuhn, Plumbing, Mechanical and Sheet Metal Contractors Alliance
Rudolf Petrowsch, American Society of Sanitary Engineering
Gene Shumann, Plumbing Designer
David Viola, Plumbing Manufacturers Institute
Joseph Zoulek, PHCC/MPA Wisconsin

Environmental Analysis

NOTICE IS HEREBY GIVEN that the Department has considered the environmental impact of the proposed rules.

In accordance with chapter Comm 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Initial Regulatory Flexibility Analysis

Types of small businesses that will be affected by the rules

Section 145.12 (5), Stats., as affected by 2005 Wisconsin Act 182, allows the department to directly assess forfeitures to individuals who violate the plumbing licensing provisions of s. 145.06, Stats. Section 182.0715 (2r), Stats., requires the installation of tracer wire or some equally-effective means of locating non-metallic underground sewer and water piping laterals. The proposed rules are intended to implement these two statutory changes which may to a degree affect plumbing contracting businesses.

Reporting, bookkeeping and other procedures required for compliance with the rules

There are no reporting or bookkeeping procedures required for compliance with the rules.

Types of professional skills necessary for compliance with the rules

There are no new types of professional skills necessary for compliance with the rules.

Do rules have a significant economic impact on small businesses? No.

Small business regulatory coordinator

Carol Dunn, who may be contacted at telephone (608) 267-0297, or Email at carol.dunn@wisconsin.gov.

Fiscal Estimate

The proposed rules serve two purposes. One part of the rules implements Wisconsin Act 182 which allows the Department to directly assess forfeitures to individuals who violate the licensing provisions of s. 145.06, Stats. The rules establish the process for assessing and appealing the forfeitures. The other part of the rules clarifies s. 182.0715 (2r), Stats., which requires the installation of tracer wire or some equally-effective means of locating non-metallic underground sewer and water laterals. The rules establish specific methods for complying with this legislative mandate. The department does not anticipate that the rules will substantially increase its workload and the workload can be accommodated with current resources.

The cost for installers to provide a method for locating non-metallic sewer and water laterals is dependent upon various variables. Depending upon the method chosen and the length of the installation, the department estimates that installation costs can be as little as \$10 per installation utilizing GIS technology, or \$1.00 per foot utilizing tracer wire.

No long range fiscal implications are anticipated.

Copies of Rule

The proposed rules and an analysis of the proposed rules are available on the Internet at the Safety and Buildings Division Web site at www.commerce.wi.gov/SB/. Paper copies may be obtained without cost from Roberta Ward, at the Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689, or Email at roberta.ward@wisconsin.gov, or at telephone (608)

266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Notice of Hearing Employee Trust Funds [CR 07-068]

A public hearing on a proposed rule to create s. ETF 20.37, regarding the status of a non-annuitant Wisconsin Retirement System participant at death, for purposes of determining the applicable death benefit, will be held on **August 14, 2007** at 10:30 AM in Conference Room GA at the offices of the Department of Employee Trust Funds, 801 West Badger Road, Madison, Wisconsin. Persons wishing to attend should come to the reception desk up the stairs (or elevator) from the main entrance.

Analysis Prepared by the Department of Employee Trust Funds

Statute interpreted

Section 40.71 (1) (b), Stats.

Statutory authority

Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.

Explanation of agency authority

By statute, the DETF Secretary is expressly authorized, with appropriate Board approval, to promulgate rules required for the efficient administration of any benefit plan established in ch. 40 of the Wisconsin Statutes. Also, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule

Section 40.02 (46), Stats., which defines a participating employee, including the criteria that the person be "... an employee who is currently in the service of, or an employee who is on a leave of absence from, a participating employer"

Section 40.02 (26), Stats., which defines "employee" and provides in part that, "... an employee is deemed to have separated from the service of an employer at the end of the day on which the employee last performed services for the employer, or, if later, the day on which the employee-employer relationship is terminated because of the expiration or termination of leave without pay, sick leave, vacation or other leave of absence."

Section ETF 10.08 (3) (a), Wis. Adm. Code, governs the date of termination for purposes of purposes of establishing eligibility to receive benefits from the Wisconsin retirement system, including separation benefits, lump sum benefits and retirement annuity benefits. That rule expressly provides that the date of termination is the earliest of several listed alternatives, among which are the expiration of an unpaid leave of absence (when the termination is based on failing to return to work after such a leave), the date the employer discharged the employee, the date the employee's resignation is effective, and the date of the employee's death.

Plain language analysis

The purpose of this rule is to codify an interpretation of s. 40.71 (1) (b), Stats., and eliminate a potential misunderstanding. The clarified interpretation will better effectuate the purpose of the statute and also reflect the Department's general policies of treating participants in the Wisconsin Retirement System impartially and of administering benefits in accord with the statutory eligibility criteria.

This rule applies to death benefits payable because of the death of a person who was not an annuitant of the Wisconsin Retirement System. The rule will codify that a person's actual status on the date of the person's death determines whether the death benefits payable from the Wisconsin Retirement System are those for an active employee or a former employee. If the person's employment was terminated prior to the date of death, then the benefits payable will be those appropriate for a former employee. The date the employer's report is received by the Department will not dictate the benefits due.

Section 40.71 (1) (b), Stats., is one of several statutes that determines whether a deceased participant is treated as an active employee, a former employee or an annuitant for purposes of paying the applicable death benefits from the Wisconsin Retirement System. This particular provision states:

If the date of death is less than one year after the last day for which earnings were paid, a participant is deemed a participating employee on leave of absence, notwithstanding the fact that no formal leave of absence is in effect, if the participating employer for which the participant last performed services as a participating employee has not filed notice of the termination of employment prior to the employee's death.

The purpose of the statute is clearly to treat a decedent whose employment had not been formally terminated as a person on leave of absence, for up to a year. Participating employees granted a leave of absence continue to be participating employees, as expressly provided by s. 40.02 (46), Stats.

It has come to the Department's attention that a misreading of the last clause of the statute is possible. The last clause might be misread to imply that if an employer terminated an employee, but did not report the termination to the Department until after the employee died, then the death benefits would be determined as if the decedent was "deemed" to be an active employee at the time of death. A clear interpretation of the last clause of s. 40.71 (1) (b), Stats., is necessary in order for the Department to calculate and pay the correct death benefits.

The interpretation to be promulgated by this rule will do nothing to change the one-year presumption in s. 40.71 (1) (b), Stats., that a deceased employee who was not terminated prior to death was an employee at death, even if no formal leave of absence had been granted.

Federal regulations

There are no known existing or proposed federal regulations that are intended to address the activities regulated by this rule.

Surrounding states regulations

Although there are a number of governmental retirement plans in Illinois, Iowa, Minnesota and Michigan, their administrative rules are not directly relevant to interpreting the Wisconsin statutes governing the Wisconsin Retirement System. Governmental plans differ in the degree to which the terms of the plan are established by enabling legislation or left to subsequent administrative rulemaking or other means.

Illinois. There appear to be no Illinois administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

A rule adopted by the State Employees Retirement System, Ill. Admin. Code title 80 § 1540.255 e), does not deal with the

computation of a death benefit, but does provide that if the member has elected to use payroll deductions for the purchase of permissive service credits or reinstating past service credits, the deductions end upon the earliest of several alternative events, including the employee's death or termination of employment.

For purposes of making distributions, the rules governing the State of Illinois Employees Deferred Compensation Plan treat the employee's severance from employment or death as two distinctly different events. Death is not included in the definition of severance from employment. See Ill. Admin. Code title 80 §§ 2700.200 and 2700.700 b) 1) and 2).

Iowa. There appear to be no Iowa administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

Michigan. There appear to be no Michigan administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

Minnesota. There appear to be no Minnesota administrative rules relating to the belated reporting of the severance or termination of employment of a person who subsequently dies, and the computation of death benefits from a public employee pension system.

Factual data and analytical methodologies

The Department considered, and rejected, the alternative interpretation of the statute that would permit an employer to delay reporting a termination and thereby possibly increase the benefits payable if the former employee should die. The Department has a duty to administer benefits in accord with the laws governing the Wisconsin Retirement System. These laws include requirements for employers to make accurate, regular and timely reports to the Department concerning covered employees. The alternative interpretation would conflict with those duties by appearing to permit a delay in reporting terminations of employment. Any effort to administer such an interpretation would also likely give rise to differing treatment of similarly situated former employees. The Department has a duty to treat participants impartially within the laws governing the retirement system.

Analysis and supporting documents used to determine effect on small business

The rule can have no effect on small businesses because private employers and their employees do not participate in, and cannot be covered by, the Wisconsin Retirement System. The Wisconsin Retirement System is required to be maintained and administered as a qualified governmental plan, covering only governmental employees.

Anticipated costs incurred by private sector

None.

Effect on small business

No effect.

Agency Contact Person

Please direct any questions about the proposed rule to Robert Weber, Chief Counsel, Office of Legal Services, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Telephone: (608) 266-5804. E-mail address: rob.weber@etf.state.wi.us.

Submission of Comments

Written comments on the proposed rule may be submitted to Robert Weber, Department of Employee Trust Funds, 801

W. Badger Road, P.O. Box 7931, Madison, WI 53707-7931. Written comments must be **received** at the Department of Employee Trust Funds no later than 4:30 PM on Wednesday, **August 15, 2007**.

Initial Regulatory Flexibility Analysis

The proposed rule has no effect on small businesses.

Fiscal Estimate

The rule will have no effect on county, city, village, town, school district, technical college district or sewerage district fiscal liabilities or revenues. The rule will have no effect on state funds.

Copies of Rule

Copies of the proposed rule are available without cost from the Office of the Secretary, Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707-7931, telephone (608) 266-1071.

Notice of Hearing Insurance [CR 07-070]

NOTICE IS HEREBY GIVEN that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedures set forth in under s. 227.18, Stats., the Office of the Commissioner of Insurance will hold a public hearing to consider the adoption of a proposed rule affecting s. Ins 2.81, Wis. Adm. Code, relating to use of the 2001 CSO Preferred Class Structure Mortality Table in determining reserve liabilities.

Hearing Information

Date: **August 22, 2007**
Time: 10:00 a.m., or as soon thereafter as the matter may be reached
Place: OCI, Room 227
125 South Webster St, 2nd Floor
Madison, WI

Submission of Comments

Written comments can be mailed to:

James W. Harris
Legal Unit – OCI Rule Comment for Rule Ins 281
Office of the Commissioner of Insurance
PO Box 7873
Madison WI 53707-7873

Written comments can be hand delivered to:

James W. Harris
Legal Unit – OCI Rule Comment for Rule Ins 281
Office of the Commissioner of Insurance
125 South Webster Street – 2nd Floor
Madison WI 53703-3474

Comments can be emailed to:

James W. Harris
James.Harris@oci.state.wi.us

Web site:

<http://oci.wi.gov/ocirules.htm>

Comments on the proposed rule submitted through the Wis. Adm. Rule Web site at: <http://adminrules.wisconsin.gov> will be considered.

The deadline for submitting comments is 4:00 p.m. on the 14th day after the date for the hearing stated in this Notice of Hearing.

Analysis Prepared by the Office of the Commissioner of Insurance (OCI)

Statutes interpreted

Sections 600.01, 601.41 (3), 601.42, 623.06 and 632.43

Statutory authority

Sections 600.01 (2), 601.41 (3), 601.42, 623.03, 623.04, 623.06, and 632.43

Agency authority

The proposed rule is promulgated under the commissioner's authority to prescribe valuation of reserve liabilities and accounting standards and reporting for insurers.

Related statutes or rules

The proposed rule relates to existing rules prescribing valuation of liabilities, non-forfeiture values, and actuarial reporting and analysis under ss. 601.42, 623.06 and 632.43, Stats., and ss. Ins 2.80 and ch. 50, Wis. Adm. Code.

Plain language analysis

Existing provisions establish mortality tables to be used by insurers to calculate minimum reserves and requirements related to testing and reporting of actuarial information. The proposed rules will allow insurers, meeting prescribed conditions, to use the 2001 CSO Preferred Class Structure Mortality Table as adopted by the National Association of Insurance Commissioners (NAIC) at the September, 2006, national meeting and published in the NAIC Proceedings (Third Quarter 2006), in determining minimum reserves on policies written after January 1, 2007. The table will allow insurers to reflect differences in mortality between preferred and standard lives in establishing reserve liabilities to more precisely fit the characteristics of outstanding policies. The proposed rule will increase the ability of management and regulators to monitor financial status.

Federal regulation

There are no federal regulations which address use of mortality tables to establish reserve liabilities for insurers doing business in Wisconsin.

Surrounding states regulation

Illinois: Adoption of the NAIC model regulation permitting the recognition of preferred mortality tables for use in determining minimum reserve liabilities of insurers is under consideration.

Iowa: Iowa Adm. Code 191-94.3, permits the use for purposes of reserve valuation, under prescribed conditions, of the 2001 CSO Preferred Class Structure Mortality Table, adopting the NAIC model regulation.

Michigan: Mich. Comp. Laws, s. 500.838a, permits the use for purposes of reserve valuation, under prescribed conditions, of the 2001 CSO Preferred Class Structure Mortality Table, adopting the NAIC model regulation.

Minnesota: Minn. Stat. Ch. 61A.257, effective August 1, 2007, adopts the NAIC model regulation permitting the recognition of preferred mortality tables for use in determining minimum reserve liabilities of insurers.

Factual data and analytical methodologies

The National Association of Insurance Commissioners (NAIC) adopted a model regulation permitting the recognition of preferred mortality tables for use in determining minimum reserve liabilities at the September, 2006, national meeting and published in the NAIC

proceedings (Third Quarter 2206). The model allows insurers, meeting prescribed conditions, to use the 2001 CSO Preferred Class Structure Mortality Table to reflect differences in mortality between preferred and standard lives in determining reserves to more precisely fit the characteristics of outstanding policies, and enhance the ability of insurers and regulators to monitor financial status. The proposed rule has been recommended by the NAIC and has been, or is in the process of being adopted by a significant number of states.

Analysis and supporting documentation used to determine effect on small businesses

This rule relates to insurer determination of minimum reserves, and there is no significant effect on small business.

Effect on small business

This rule will have little or no effect on small businesses.

Agency contact person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the Web site at: <http://oci.wi.gov/ocirules.htm> or by contacting:

Inger Williams, OCI Services Section, at:
 Phone: (608) 264-8110
 Email: Inger.Williams@oci.state.wi.us
 Address: 125 South Webster St – 2nd Floor,
 Madison WI 53703-3474
 Mail: PO Box 7873
 Madison, WI 53707-7873

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

The OCI small business coordinator is Eileen Mallow and may be reached at phone number (608) 266-7843 or at email address: Eileen.Mallow@oci.state.wi.us

Fiscal Estimate

There will be no state or local government fiscal effect.

This rule change will have no significant effect on the private sector regulated by the OCI.

Copy of Rule and Contact Person

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the OCI internet Web site at <http://oci.wi.gov/ocirules.htm> or by contacting Inger Williams, Public Information and Communications, OCI, at: Inger.Williams@oci.state.wi.us, (608) 264-8110, 125 South Webster Street – 2nd Floor, Madison WI or PO Box 7873, Madison WI 53707-7873.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 07-074]

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.09 (2) (intro.), 23.091, 23.11, 23.22 (2) (a) and (b) 6., 27.01 (2) (j), 29.014 (1), 29.041, 29.039 (1), 29.509 (4) and (5) and 227.11 (2) (a), Stats., interpreting ss. 23.09 (2) (intro.), 23.22 (2) (a), 29.014 (1), 29.039 (1), 29.041 and 227.11 (2) (a), Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 19 and 20, Wis. Adm. Code, relating to control of fish diseases and invasive species. The proposed rule makes permanent and clarifies recent

emergency measures for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

The proposed rule limits the transport of live fish away from specified waters and requires the immediate drainage of water from boats, boating equipment, fishing equipment and other containers upon removal from those specified waters. Waters specified in the rule include Lake Michigan, Lake Superior, Mississippi River, Lake Winnebago and the Fox River downstream to Green Bay, and all connecting waters upstream to the first barrier impassable to fish. If VHS is found outside of the waters specified in the rule, than all waters of the state would be included.

The proposed rule also requires that bait dealers apply for and possess a department permit to harvest wild bait from any water and keep daily harvest and disposition records.

The proposed rule bans the use or possession of imported live bait (minnows, crayfish and frogs), with exceptions. It also prohibits any person from using dead fish, fish eggs, crayfish, frogs or any parts thereof as bait, with exceptions, and it limits the use of fish and fish parts as bait in crayfish traps and turtle traps, with exceptions.

Finally, the proposed rule adds a new criterion for the issuance of permits for licensed bait dealers to use nonstandard minor gear, allowing the permits to be denied if use of the gear could spread invasive species or diseases.

The Order makes permanent and clarifies the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E), May 2, 2007 by Order No. FH-25-07(E) and May 27, 2007 by Order No. FH-28-07(E) for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state.

SECTION 1 of this Order creates definitions of “live fish” and “live fish eggs” for purposes of the rule created by SECTION 3 that prohibits the transport of live fish and fish eggs taken from or possessed on any inland or outlying water or its bank or shore.

SECTION 2 revises the title of s. NR 19.05.

SECTION 3 adds a new subsection (3) to s. NR 19.05, that prohibits the transport of live fish or fish eggs that were taken from or possessed on the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters.

SECTION 4 of the Order creates a new rule in ch. NR 19 that requires any person who removes a boat, boat trailer, boating equipment or fishing equipment from the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake Winnebago to Green Bay, or any connected waters upstream to the first fish barrier, or from the bank or shore of any of those waters, to immediately drain all water from the boat, boat trailer, boating equipment or fishing equipment, including water in any bilge, ballast tank, bait bucket, live well or other container, unless it has been exempted in writing by the department after determining that it will not allow VHS virus to be transported to other waters. In addition, if the department formally determines that any other water body is infected with Viral Hemorrhagic Septicemia virus, SECTION 4 makes the immediate drainage requirement apply to all waters of Wisconsin. The drainage requirement also applies to containers and fishing equipment used by bank or shore anglers. Finally, it exempts tanks or containers of potable drinking water and other beverages intended for human consumption.

SECTION 5 of the Order establishes a procedure for the department to formally notify the public if it determines that any water body other than the Great Lakes, the Mississippi River, Lake Winnebago, the lower Fox River from Lake

Winnebago to Green Bay, or any connected water upstream to the first fish barrier, is infected with Viral Hemorrhagic Septicemia virus, based on test results or other empirical evidence that the virus is present. Public notice must be given by issuing a press release, by publication of a notice in the official state newspaper, and by any other means that is reasonably likely to inform the public. Following such a determination and public notice, the provisions of s. NR 19.03 (3) restricting the transport of live fish and eggs from these waters, and of s. NR 19.056 requiring immediate drainage of boats, boat trailers, boating equipment and fishing equipment upon removal from the water, bank or shore of these waters, thereafter apply state-wide to all waters.

SECTION 6 of the Order requires that bait dealers apply for and possess a department permit in order to harvest wild bait from any water, that they keep records of their harvest and of its disposition, except for retail sales to consumers, and that they not possess farm-raised fish while transporting wild harvested minnows, crayfish or frogs back to their business or to the point of sale.

SECTION 7 of the Order eliminates the current requirement that only fish or fish parts and meal may be used as bait for trapping crayfish. It then adds a requirement that if fish (or fish parts) are used as crayfish bait, they must come from the same water where they will be used as bait, except with written approval of the department.

SECTION 8 of the Order bans the use of fish (and fish parts) as bait to trap turtles unless the fish came from the same body of water where they will be used as bait, or with written approval of the department.

SECTION 9 of this Order creates definitions of “live fish” and “live fish eggs” for purposes of the rules created by SECTION 10 that restrict the use of improperly imported live bait and the use of dead bait that has not been preserved by a means that will kill the VHS virus.

SECTION 10 of the Order bans the use or possession of imported live bait (minnows, crayfish and frogs) except bait imported in compliance with DATCP’s import and health requirements in ch. ATCP 10, Wis. Adm. Code, and live bait from Iowa or Minnesota used or possessed on boundary waters with those states (the Mississippi River “between the tracks”, Lake St. Croix, and the St. Croix river and the St. Louis river as defined in s. NR 21.02 (16)). It also prohibits any person from possessing or using dead fish, dead fish eggs, dead crayfish, dead frogs, or any parts thereof as bait, with 3 exceptions: dead fish, dead fish eggs, dead crayfish, dead frogs, or any parts thereof may be used as bait on Lake Michigan, Green Bay and their tributaries upstream to the first dam or other obstruction impassible to fish; they may be used on the same water body from which they were obtained; and they may be used on any waters of the state if they have been preserved by means other than refrigeration or freezing. The rules also allow dead minnows to still be used as bait, as if they were alive, if certain conditions are met, even though the dead minnows are not preserved by any particular method.

SECTION 11 adds a provision to the current rule governing minnow collection, reiterating the requirement that a bait dealer must obtain the wild bait harvest permit created by SECTION 6 of this Order; describes the permit issued under s. NR 20.39 as a “non-standard gear permit” to distinguish it from the wild harvest permit; and corrects the wording of the Note to NR 20.14 regarding transport of live minnows as affected by this Order. The current note incorrectly states that transportation of minnows is permitted throughout the state.

SECTION 12 of the Order adds a new criterion for the issuance of permits that allow licensed bait dealers to use non-standard minnow gear. The new rule stipulates that such

permits may be denied if the department determines that use of the non-standard gear (minnow seines, minnow dip nets or minnow traps) is likely to result in the spread of invasive species or diseases. SECTION 12 also adds a Note to NR 20.39 regarding the need for a wild harvest permit issued under rules created by SECTION 6 of this Order.

Initial Regulatory Flexibility Analysis

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses as follows:

a. Types of small businesses affected: Bait dealers, wholesale fish dealers, commercial fishers, anglers, boaters and individuals involved in the harvest, rearing or use of fish bait.

b. Description of reporting and bookkeeping procedures required: No new procedures

c. Description of professional skills required: No new skills

The Department’s Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Analysis

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

August 14, 2007 Tuesday at 5:30 p.m.	South Central Region Hdqrs. 3911 Fish Hatchery Road Fitchburg
August 15, 2007 Wednesday at 5:30 p.m.	Room B19 La Crosse State Office Bldg. 3550 Mormon Coulee Road La Crosse
August 16, 2007 Thursday at 5:30 p.m.	Room 140 DNR Southeast Region Hdqrs. 2300 N. Dr. Martin Luther King Jr. Dr. Milwaukee
August 20, 2007 Monday at 5:30 p.m.	Wetland Room Green Bay Wildlife Sanctuary 1660 East Shore Drive Green Bay
August 23, 2007 Thursday at 5:30 p.m.	Upstairs Meeting Room State Highway Patrol Hdqrs. 2805 Martin Avenue Wausau
August 23, 2007 Thursday at 5:30 p.m.	Classroom Superior Public Library 1530 Tower Avenue Superior

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please

call Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

It is indeterminate whether the proposed changes will have any fiscal impact on state or local governments.

Assumptions used in arriving at fiscal estimate

The fiscal impact that this rule will have on state and local government—namely the increased costs associated with addressing or containing the VHS problem—is difficult to estimate given the short amount of time that has elapsed since the discovery of the virus and the uncertainty about the extent to which the virus may or may not spread to other parts of the state. Consequently, the Department is characterizing the state and local fiscal impact as “indeterminate” until more detailed cost information becomes available.

Copies of Rule, Written Comments, Contact Person

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 23, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Horns.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 227.24 and 29.192 (3), Stats., interpreting ss. 23.09 (2) (intro.), 29.014 (1), 29.041, 227.11 (2) (a) and 227.24 (1) (a), Stats. The Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-29-07(E) pertaining to the hook and line harvest of lake sturgeon. The emergency rule amends s. NR 20.20 to increase the minimum length limit for lake sturgeon in inland waters from 50" to 60" and reduce the season length from 6 weeks to 4 weeks. This emergency order will take effect on July 23, 2007.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the public hearing will be held on:

August 13, 2007	Room G09
Monday	GEF #2 Office Building
at 1:00 p.m.	101 South Webster Street
	Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Karl Scheidegger at (608) 267-9426 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The proposed changes have no fiscal impact on state or local government.

Assumptions used in arriving at fiscal estimate

This emergency rule makes the following changes to the harvest of inland populations of lake sturgeon:

1) It increases the minimum length limit of lake sturgeon from 50" to 60" in inland waters where lake sturgeon are now harvested by hook and line.

2) It reduces the season length from 6 weeks to 4 weeks. Currently the open season for hook and line lake sturgeon is the first Saturday in September to October 15. The proposed season length would run from the first Saturday in September to September 30.

Copies of Rule, Written Comments, Contact Person

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Karl Scheidegger, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 17, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Scheidegger.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

[CR 07-075]

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014 (1), 29.041, 29.519 (1m) (b) and 227.11 (2) (a), Stats., interpreting ss. 29.014 (1), 29.041 and 29.519 (1m), Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 25.06 (2) (b) 1., Stats., relating to the commercial fishing for yellow perch in zone 1 (Green Bay).

Yellow perch abundance fluctuates widely. For the most part these fluctuations can be attributed to weather and to biological factors outside our control. But commercial and recreational harvests can deplete a population and inhibit recovery when numbers are low, so the Department regulates the harvest of yellow perch from Green Bay by limiting the annual total allowable commercial harvest and the daily recreational bag limit. The Department attempts to split the allowable harvest equally between sport and commercial fishers. The proposed rule would increase the total allowable commercial harvest from 60,000 pounds to 100,000 pounds.

Initial Regulatory Flexibility Analysis

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses as follows:

- Types of small business affected: Commercial fishers for yellow perch in Green Bay
- Description of reporting and bookkeeping procedures required: No new procedures
- Description of professional skills required: No new skills

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Analysis

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this

action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

August 13, 2007	Council Chambers
Monday	Peshtigo Municipal Bldg.
at 1:00 p.m.	331 French Street
	Peshtigo
at 4:30 p.m.	Estuary Room
	Green Bay Wildlife Sanctuary
	1660 East Shore Drive
	Green Bay

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

There will be no fiscal impact. This is a simple adjustment of a harvest limit, and requires no special or additional work by state employees.

Copies of Rule, Written Comments, Contact Person

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 23, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Horns.

Notice of Hearing

Natural Resources

(Environmental Protection—Water Regulation, Chs. NR 300—)

NOTICE IS HEREBY GIVEN that pursuant to ss. 30.12 (1g) and (3), 30.123 (6) and (7), 30.19 (1m) and (3r), 30.20 (1r) and (1t), 30.206 and 227.24, Stats., interpreting ss. 30.12 (1g) and (3), 30.123 (6) and (7), 30.19 (1m) and (3r), 30.20 (1r) and (1t) and 30.206, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WT-32-07(E) pertaining to general permit criteria requiring decontamination of equipment for invasive species and viruses. The emergency rule, which took effect on July 12, 2007, creates provisions in chs. NR 320, 323, 328, 329, 341, 343 and 345, Wis. Adm. Code.

The emergency rule modifies existing rules to establish a new exemption and general permit criteria requiring decontamination of equipment for invasive species and

viruses (including but not limited to VHS (viral hemorrhagic septicemia)) for activities that would otherwise require an individual permit condition to which the same condition would apply. The new exemption or general permit standard requires any person conducting an exempt or general permit activity to:

1. Inspect and remove aquatic plants, animals and mud from equipment.
2. Drain all water from equipment, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps.
3. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
4. Wash equipment with hot (>104° F) and/or high pressure water or allow equipment to dry thoroughly for 5 days.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the public hearing will be held on:

August 13, 2007	Room G09
Monday	GEF #2 Office Building
at 2:00 p.m.	101 South Webster Street
	Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Martye Griffin at (608) 266-2996 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

This rule will increase operational costs for the state or for counties and municipalities to the extent that these precautionary practices are not already being implemented by these entities or by contractors acting on their behalf. However, since insufficient information is available to accurately estimate these costs, the department is characterizing the state and local fiscal impact as "indeterminate" until more detailed cost information becomes available.

Copies of Rule, Written Comments, Contact Person

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Martye Griffin, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 23, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Griffin.

Notice of Hearing

Natural Resources

(Environmental Protection—Air Pollution Control, Chs. NR 400—)

[CR 07-076]

NOTICE IS HEREBY GIVEN that pursuant to ss. 285.11 (1), 285.13 and 285.17, Stats., interpreting ss. 285.11 (1),

285.13 and 285.17, Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 406, 407 and 445, Wis. Adm. Code, relating to the timeline for implementation of air permit and hazardous air pollutant requirements for emissions associated with agricultural waste and minor technical corrections. The State Implementation Plan developed under s. 285.11 (6), Stats., is also revised.

The proposed rule will extend the compliance deadline to July 31, 2011 for air permit and hazardous air pollutant requirements associated with agricultural waste under chs. NR 406, 407 and 445. The reason this rule is needed is that results of ongoing state and federal air monitoring studies of animal feeding operations will not be available in time to support implementation of current rules by the July 2007 and June 2008 compliance deadlines. Extension of the compliance deadline to July 31, 2011 will allow sufficient time for completion of these studies and development of compliance plans by affected sources. When the original rule language was adopted in 2004, it was anticipated that these study results would be available to support timely rule implementation.

The results of the state study will be available by mid-2008 and results of the federal study will be available by mid-2010. The study results will provide an emissions estimation methodology for calculating emissions associated with agricultural waste, which is necessary to determine rule applicability and compliance options.

In addition, this proposal includes minor technical corrections to ch. NR 445.

Initial Regulatory Flexibility Analysis

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rules may have an impact on small businesses as follows:

a. Types of small businesses affected: Sources of hazardous air emissions associated with agricultural waste. It is anticipated this rule will impact large livestock operations.

b. Description of reporting and bookkeeping procedures required: None

c. Description of professional skills required: None

The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Analysis

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

September 10, 2007	Room 511
Monday	GEF #2 Office Building
at 1:30 p.m.	101 South Webster Street
	Madison

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bob Eckdale at (608) 266-2856 with specific information on your request at least 10 days before the date of the scheduled hearing.

Fiscal Estimate

The proposed changes have no fiscal impact on state or local governments.

Assumptions used in arriving at fiscal estimate

This proposal is to extend the compliance deadline to July 31, 2011, for air permit and hazardous air pollutant requirements associated with agricultural waste. In addition, this proposal includes minor technical corrections to ch. NR 445. No action is required by local government. No new costs are associated with these proposed changes, neither to the private sector nor to government.

Copies of Rule, Written Comments, Contact Person

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. (Search this Web site using the Natural Resources Board Order No. AM-24-07. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Eileen Pierce, South Central Regional Air and Waste Leader, 3911 Fish Hatchery Road, Madison, WI 53711 or by e-mail to Eileen.Pierce@wisconsin.gov. Comments may be submitted until September 14, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. If you do not have Internet access, a personal copy of the proposed rule and supporting documents, including the fiscal estimate may be obtained from Robert Eckdale, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707 or by calling (608) 266-2856.

Notice of Hearings

Public Instruction

[CR 07-057]

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.35 (2), 121.02 (5) and 227.11 (2) (a), Stats., and interpreting s. 121.02 (1) (t), Stats., the Department of Public Instruction will hold public hearings as follows to consider the amending of s. PI 8.01 (2) (t) 2., relating to the identification of gifted and talented children.

Hearing Information

The hearings will be held as follows:

Date and Time	Location
August 20, 2007 3:00 – 5:00 p.m.	Eau Claire UW Eau Claire Schneider Hall 1702 Park Avenue Room 225
August 22, 2007 3:00 – 5:00 p.m.	Stevens Point UW – Stevens Point CPS Building 1901 Fourth Avenue Room 116

August 23, 2007
3:00 – 5:00 p.m. Madison
GEF 3 Building
125 South Webster Street
Room 041

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Chrystyna Mursky, Consultant, Gifted and Talented, at (608) 267-9273 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule, Written Comments, Contact Person

The administrative rule and fiscal note are available on the internet at <http://dpi.wi.gov/pb/rulespg.html>. A copy of the proposed rule and the fiscal estimate also may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson, Administrative Rules and Federal Grants
Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above mail or email address no later than August 24, 2007, will be given the same consideration as testimony presented at the hearing.

Analysis by the Department of Public Instruction

Statute interpreted

Section 121.02 (1) (t), Stats.

Statutory authority

Sections 118.35 (2) and 121.02 (5), Stats.

Agency authority

Section 118.35 (2), Stats., requires the state superintendent to establish guidelines for the identification of gifted and talented pupils by rule.

Section 121.02 (5), Stats., requires the department to promulgate rules to implement and administer the 20 school district standards under s. 121.02 (1), Stats. Gifted and talented is one of those standards.

Related statute or rule

Section 118.35, Stats., programs for gifted and talented pupils.

Plain language analysis

In *Todd Palmer v. The State Of Wisconsin Department Of Public Instruction*, the Court instructed the department to promulgate a rule establishing guidelines for identifying gifted and talented pupils as required under s. 118.35 (2), Stats., because its current rule under s. PI 8.01 (2) (t), is not sufficient.

Therefore, the department is modifying s. PI 8.01 (2) (t) to establish more specific guidelines for the identification of gifted and talented pupils. The rule requires the school district board to identify pupils in grades kindergarten through grade 12 in the five areas specified in statute. Multiple measures must be used to build a pupil profile, instruments and measures must be validated for the specific purposes for which they are being used, and the identification process and tools must be responsive to the pupil's economic conditions,

race, gender, culture, native language, developmental differences, handicapping conditions, and other factors.

Federal regulations

N/A

Surrounding states regulations

- *Illinois* – Illinois' rules apply only to locally developed GT programs for which state funding is sought. Illinois State Code requires the use of multiple measures (3 or more); the measures must be valid for their purpose; the process must be fair and impartial; and assessment instruments must be sensitive to inclusion of underrepresented groups. Illinois also requires an appeals process. Illinois' State Code allows any "area of aptitude" to be identified, but there is "an emphasis on" language arts and math (the top 5% locally must be identified in these two areas). The identification process must be of equal rigor in each area of aptitude but does not specify identification can be in more than one area. Finally, a procedure for notifying parents of identification results must be provided and there must be an annual report to the parents and community.
- *Iowa* – Iowa requires a school improvement plan be in place for each district. The plan must include valid and systematic procedures including multiple selection criteria and goals and performance measures. GT policies must be free from discrimination practices in the education program. Iowa does not specify areas of identification; and does not specify whether identification can be in more than one category.
- *Michigan* – No rule requirements for gifted identification criteria or programs.
- *Minnesota* – No rule requirements to identify or serve gifted students.

Summary of factual data and analytical methodologies

The primary reference source for developing the proposed rule is the document, *Pre-K-Grade 12 Gifted Program Standards*, published by the National Association for Gifted Children (NAGC). The NAGC supports and develops policies and practices that encourage and respond to the diverse expressions of gifts and talents in children and youth from all cultures, racial and ethnic backgrounds, and socioeconomic groups. It supports and engages in research and development, staff development, advocacy, communication, and collaboration with other organizations and agencies who strive to improve the quality of education for all students. The NAGC standards were developed in 1998 and represent consensus from professionals in the field on critical practice in gifted education. In addition, the proposed rule is consistent with the state superintendent's commitment to the children and youth of Wisconsin found in *The New Wisconsin Promise*.

Analysis and supporting documents used to determine effect on small business

N/A

Initial Regulatory Flexibility Analysis

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Fiscal Estimate

The proposed rules establish more specific guidelines for the identification of gifted and talented pupils. The size of the population of children identified as gifted and talented as a result of this rule is indeterminate. However, these rules are not expected to have a significant local or state fiscal effect.

School districts may have to purchase some additional assessment materials if they need to use a tool they don't already have and assign staff to administer any new screening or testing that takes place.

There are no anticipated costs incurred by the private sector.

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Agency Contact Person

Chrystyna Mursky, Consultant
 Gifted and Talented
 (608) 267-9273
 chrystyna.mursky@dpi.state.wi.us

Notice of Hearing Transportation [CR 07-072]

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1) and 343.51(1) and (2), Stats., and interpreting ss. 340.01(43g), 341.14(1), (1a), (1e), (1m), (1q) or (1r)(a), 343.51, 343.52, 346.50(1m), (2a)(h), (j), and (k) and (3), Stats., the Department of Transportation will hold a public hearing in Room 144-B of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **15th day of August, 2007, at 1:00 PM**, to consider the amendment of ch. Trans 130, Wisconsin Administrative Code, relating to special identification cards and special registration plates for physically disabled.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted

Sections 340.01(43g), 341.14(1), (1a), (1e), (1m), (1q) or (1r) (a), 343.51, 343.52, 346.50 (1m), (2a)(h), (j), and (k) and (3), Stats.

Statutory authority

Sections 85.16 (1) and 343.51 (1) and (2), Stats.

Agency authority

The Department is required to provide special identification cards, to be used for access to reserved parking spaces, for persons with disabilities that limit or impair the ability to walk.

Related statute or rule

Section 343.51, Stats., and Ch. Trans 130

Plain language analysis

Chapter Trans 130 governs the issuance and use of cards and special registration plates that authorize special parking privileges for persons with certain physical disabilities, and for organizations that regularly transport such persons.

This rule amendment updates language to conform to recent statute changes: expanding the persons who are authorized to sign a health care provider statement, and requiring the applicant to retain a copy of the health care provider statement.

In addition, as required by s. 343.51(2m)(b), Stats., this rule amendment provides policy and procedure for requesting replacement cards, in order to deter practice of obtaining replacement cards which are not legitimately needed and may be fraudulently distributed.

Finally, this rule amendment distinguishes between cards issued to individuals and to organizations.

Federal regulations

The federal Americans with Disabilities Act (ADA) and consequent regulations of the federal National Highway Traffic Safety Administration (NHTSA) govern states' issuance of disabled parking cards and license plates. Ch. Trans 130 conforms to federal regulation.

Surrounding states regulation

Michigan: No fee is charged to replace a mutilated card, but the applicant must return the mutilated card. Replacement fee for lost or stolen card is \$10. There is no limit on the number of replacements that can be requested. Initial permanent card is valid for 5 years and then renewed every 4 years.

Minnesota: Disability placards may be replaced if they are reported lost, stolen, or damaged. If a person reports 3 certificates lost in any 36-month period, they must explain why so many placards needed to be replaced, what they are doing to assure that placards are not lost in the future, and get permission from the State Council on Disability to receive another placard. By policy, damaged placards are requested to be turned in at the time of application for replacement and applications for placards reported stolen should include a copy of the police report; if this procedure is followed the stolen or damaged certificates do not count toward the lost certificate restriction. Long-term and permanent replacement placards are issued at no fee. Temporary and short-term placards require a \$5 fee for replacement.

Illinois: Replacement fee \$10. If a card is lost, stolen or damaged, the cardholder must submit a signed replacement card application. Only one card is issued per applicant. Fines for using lost, stolen, fraudulent, or altered card range from \$1,000 to \$2,500.

Iowa: No fee is charged for a replacement placard. If the request is for replacement of a temporary card, Iowa requires a new medical certification. No new certification needed for replacing a permanent card. There is no limit on the number of replacements that can be requested.

Factual data and analytical methodologies

Chapter Trans 130 currently requires a person to check the reason that the person requires a replacement card: lost, stolen, destroyed, mutilated or illegible, or name change; but DMV does not deny replacement card issuance.

DMV has considered several possible approaches to strengthen replacement card issuance:

- Ask for the return of mutilated or damaged cards; possibly ask for a police report for stolen cards. This approach may reduce requests but places some burden on the applicant.
- Ask a person to file request via law enforcement or court. The disadvantage is workload burden on the law enforcement or court.
- Establish a replacement fee, possibly coupled with no charge if there's a stolen card report. Again, this approach may reduce requests but places some burden on the applicant.
- Put some unique feature on a replacement card, coupled with establishing more frequent renewal or reissue periods – to more frequently purge the database of obsolete cards. However, this would result in large cost to DOT and a burden to all cardholders.

- Not allow a person to apply for a replacement card within a period of time after their last replacement card. A disadvantage is this could deny a legitimate replacement to someone who needs a replacement immediately.
- Informing local law enforcement whenever a person receives a replacement card. This approach results in cost to DMV and law enforcement and it is uncertain whether this would actually have any value.

DOT has chosen to require additional documentation in the form of a signed, notarized statement from applicants who have had possibly excessive requests for replacement cards. DOT has chosen not to charge a fee for replacement cards, and not to ask cardholders to return cards to DOT, to minimize the burden on customers, the vast majority of whom have a legitimate need to obtain a replacement card. The signed, notarized statement additionally provides a record of facts that the applicant is attesting to, in requesting a replacement card.

Analysis and supporting documentation used to determine effect on small businesses

This rule making affects disabled individuals and organizations that provide transportation to disabled individuals. The rule has no effect on small business.

Effect on Small Business

The rule has no effect on small business. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal Estimate

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated Costs Incurred by Private Sector

The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency Contact Person and Place Where Comments Are to be Submitted and Deadline for Submission

The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Division of Motor Vehicles, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

Notice of Hearing
Workforce Development
(Workforce Solutions, Chs. DWD 11-59)
[CR 07-071]

NOTICE IS HEREBY GIVEN that pursuant to Section 49.155 (1d), Stats., as affected by 2005 Wisconsin Act 165; and s. 227.11 (2) (a), Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules affecting ch. DWD 55, relating to child care certification and affecting small businesses.

Hearing Information

August 15, 2007
Wednesday
1:30 p.m.

MADISON
G.E.F. 1 Building, A415
201 E. Washington Avenue

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority

Section 49.155 (1d), Stats., as affected by 2005 Wisconsin Act 165; and s. 227.11, Stats.

Statutes interpreted

Sections 48.651 and 48.685, Stats.; Sections 49.155 (1d) and 253.15 (4), Stats., as affected by 2005 Wisconsin Act 165; Section 347.48 (4), Stats., as affected by 2005 Wisconsin Act 106

Related statutes and rules

Section 48.65, Stats, and Chapters HFS 45, 46, and 55

Explanation of agency authority

Section 49.155 (1d), Stats., provides that the department shall promulgate rules establishing standards for the certification of child care providers under s. 48.651, Stats. The department shall consult with the Child Abuse and Neglect Prevention Board before promulgating those rules. In establishing the requirements for certification of a child care provider, the department shall include a requirement that all providers and all employees and volunteers of a provider who provide care and supervision for children receive, before the date on which the provider is certified or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome, if the provider, employee, or

volunteer provides care and supervision for children under one year of age, and the training relating to shaken baby syndrome and impacted babies required under s. 253.15 (4), Stats., if the provider, employee, or volunteer provides care and supervision for children under 5 years of age.

In establishing the requirements for certification as a Level II certified family child care provider, the department may not include any other requirement for training for providers.

Section 48.651, Stats., provides that each county department shall certify, according to the standards adopted by the Department of Workforce Development under s. 49.155 (1d), each child care provider reimbursed for child care services provided to families determined eligible under s. 49.155, unless the provider is a child care center licensed by the Department of Health and Family Services under s. 48.65, Stats., or is established or contracted for by a school board under s. 120.13 (14), Stats. The county shall certify two categories of child care providers: Level I and Level II.

Summary of proposed rules

The proposed rules make the following changes:

Shaken baby syndrome.

The proposed rules implement the requirements of 2005 Wisconsin Act 165, relating to training to prevent shaken baby syndrome. The proposed rules require county and tribal agencies provide information on shaken baby syndrome to applicants prior to initial certification. All certified family child care operators, employees, and volunteers who provide care and supervision for children under 5 years of age shall receive department-approved training on shaken baby syndrome and appropriate ways to manage crying or fussing children before the date on which the child care operator is certified or the employment or volunteer work commences.

Restraints for children in motor vehicles.

The proposed rules also adopt the changes required by 2005 Wisconsin Act 106 on using booster seats and other restraints for children under 8 years old in motor vehicles used to transport children. If the child is less than one year old or weighs less than 20 pounds, the child shall be properly restrained in a rear-facing individual child care safety seat. If the child is at least 1 year old and weighs at least 20 pounds but less than 4 years old or weighs less than 40 pounds, the child shall be properly restrained in a forward-facing individual child car safety seat. If the child is at least 4 years old but less than 8 years old, weighs at least 40 pounds but not more than 80 pounds, and is not more than 57 inches in height, the child shall be properly restrained in a shoulder-positioning child booster seat. Children under age 13 years may not ride in the front seat of a vehicle.

Definitions

The proposed rules use the term “certified child care operator” to mean an individual, corporation, partnership, limited liability corporation, non-incorporated association, or cooperative that has legal and financial responsibility for the operation of a child care program and for meeting the requirements under this chapter. A “provider” means a certified child care operator or an employee or volunteer of the child care operator who provides care and supervision for infant, preschool, or school-age children on behalf of the operator.

The proposed rules also use the term “child care” in place of “day care.”

Certification process.

- Each county or tribal agency may determine whether to require an applicant to submit references. Under the

current rules, the department requires that applicants for certification provide references to the county or tribal agency.

- Under the current rules, within 60 days after receiving a completed application for certification or recertification, a county or tribal agency must either approve the application and issue a certificate or deny the application. Under the proposed rules, the county or tribal agency shall issue a certification to an applicant within 60 days after determining that the applicant is fit and qualified and the applicable standards in ss. DWD 55.08 or 55.09 are in compliance. The rules define “fit and qualified” as displaying the capacity to successfully nurture and care for children, including consideration of abuse of alcohol or drugs, history of a civil or criminal conviction or rule violation that substantially relates to caring for children as described in ch. HFS 12, exercise of unsound judgment, or a history of civil or criminal offenses or any other actions that demonstrate an inability to manage the activities of a child care program. A county or tribal agency may backdate approval to the date that the county or tribal agency received the child care operator’s completed application for certification.
- A county or tribal agency may charge a fee for school-age child care certification not to exceed the licensing fee for a group child care center that provides care and supervision for 9 or more children, plus the costs of required criminal record checks.
- A county or tribal agency shall conduct an inspection of the tract of land on which the home used for child care is located and all buildings and structures on that land, including areas that will not be used for child care.
- A county or tribal agency shall limit certification to one operator for each family residence. This limit is necessary to ensure accurate monitoring of group size and has been departmental policy since 2002.
- A county or tribal agency may require an evaluation and written statement by a physician or licensed mental health professional of any person associated with the care of children or any household resident if the county or tribal agency has reason to believe that the person’s physical or mental health may endanger children in care. The county or tribal agency may deny, suspend, revoke or refuse to renew certification if the evaluation gives the county or tribe reasonable concern that the person’s physical or mental health may endanger children in care.
- The authority for a county or tribal agency to discontinue payment for various violations is repealed from the section on certification denial because it is not an issue of certification. Termination of payment is a subsidy issue that is covered by Chapter DWD 56, relating to the administration of child care funds.
- If a certified family child care operator violates the provisions of this chapter, s. 48.685, Stats, or ch. HFS 12, the county or tribal agency shall require the operator to submit a plan of correction for violation in writing and may forbid the operator to enroll any new children until all violations have been corrected; issue a warning of revocation in writing; or suspend the operator’s certification for not more than 60 days. The agency shall either reinstate or revoke the certification by the date that the suspension expires.

Qualifications of child care operators and providers

- A certified child care operator shall demonstrate that he or she is free from tuberculosis test prior to recertification as well as certification.

- The current rule provides that a Level I certified family child care operator shall have completed at least 15 hours of child care training approved by the county or tribal agency responsible for certification. The proposed rule provides that a family child care operator shall have completed at 2 credits of early childhood training or non-credit department-approved training prior to Level I certification.
- Prior to issuing a Level I certification, the county or tribal agency may require that an applicant graduated from high school, obtained a high school equivalency diploma, or obtained a certificate of general education development.
- A substitute who has worked more than 240 hours for a certified family child care operator with a Level I (regular) certification must complete the same early childhood training as the operator. A substitute is a provider who replaces the certified child care operator or staff in a school-age program on a pre-arranged or planned basis.
- The current rule provides that a certified provider shall report immediately to the certifying agency any changes that affect the certified provider's eligibility for certification, including changes in individuals living in the household. The proposed rule provides that a certified child care operator shall report as soon as possible, but no later than the operator's next working day changes that affect eligibility, including the following:
 - Death of a child in care or accident that results in an injury that requires professional medical treatment.
 - Any damage to the premises that may affect compliance with this chapter.
 - Any construction or remodeling of the premises that might have an effect on health and safety of children in care.
 - Convictions, pending charges, or other offenses of the child care operator, household member, or other persons subject to a caregiver background check that could potentially relate to the care of children.
 - Any incident involving law enforcement, including outstanding warrant or child protective services contact.
 - Any inappropriate discipline of a child by a provider, volunteer, or household member, including any incident that results in a child being forcefully shaken or thrown against a hard or soft surface during the child's hours of attendance.
 - Changes in individuals living in the household.
 - Changes in hours of operation, phone number, or physical address.
 - Upon the hiring of a new employee or volunteer and before the employment or volunteer work commences. A substitute or volunteer must be approved by the certifying agency before employment of volunteer work commences.

Home for providing family child care.

- The current rule provides that each floor level used for child care shall have at least one unblocked exit. The proposed rule provides that each floor level used for child care shall have at least 2 exits, all exits shall be clear of obstruction, and the primary exit shall be a door or stairway providing unobstructed travel to the outside at street or ground level. The secondary exit must be either a door or stairway that provides unobstructed travel to the outside at street or ground level; a door or stairway leading

to a platform or roof with railings which has an area of at least 25 square feet, is at least 4 feet long, and is not more than 15 feet above the ground level; or a window not more than 46 inches above the floor that is capable of being opened from the inside without the use of tool or removal of a sash, and which has a nominal window opening size of at least 20 inches in width and 24 inches in height. If the care is provided in a basement, the primary exit must be a door or stairway that provides unobstructed travel to the outside of the building at street or ground level and the secondary exit must be a door or stairway that provides unobstructed travel or a window not more than 46 inches above the floor that is capable of being opened from the inside without the use of tool or removal of a sash and which has a nominal window opening size of at least 20 inches in width and 24 inches in height.

- The home shall have a working carbon monoxide detector.
- The inside temperature of the home may not be less than 67 degrees Fahrenheit. If the inside temperature exceeds 80 degrees Fahrenheit, there must be air circulation with safe fans or other means if the home is not air conditioned.
- The home shall be free of hazards, including recalled products.
- The premises may not have any flaking or deteriorating paint on exterior or interior surfaces in areas accessible for children. Lead-based paint may not be used on any surface on the premises.
- Appliances for food preparation, serving, and clean-up must be kept clean, sanitary, and in good working condition.

Child health care

If a child attending child care or a child care operator's own child has a reportable communicable disease under ch. HFS 145 that is transmitted through normal contact, such as chicken pox, German measles, infectious hepatitis, measles, mumps, scarlet fever, or meningitis, a provider shall notify the local public health officer and parents of all the enrolled children. A child who has or had may not be admitted to certified child care unless the child's parents provide a statement from a physician that the child's condition is no longer contagious or the child has been absent for a period of time equal to the longest usual incubation period for the disease as specified by the Department of Health and Family Services.

Supervision

- The child care operator shall have a designated adult who can provide assistance in the event an unexpected emergency. The emergency back-up provider must be at least 18 years of age and able to provide an acceptable level of child care.
- When the children are playing outside, a provider must be outside with the children and provide both sight and sound supervision at all times.
- When a child care operator cares for children in the children's own home, the operator is not required to comply the group size limits and the operator may not care for any children who do not reside in the home.

Activities and equipment

- The proposed rules refine the requirements on activities that providers must plan for children in care based on the Wisconsin Model Early Learning Standards. The proposed rules add new requirements that a provider read to the children at least 15 minutes daily and plan a balance of activities to protect children from excess fatigue and overstimulation.

- The proposed rules create a new subsection on safe indoor and outdoor play equipment. The rules require that:
- Equipment shall be scaled to the size and developmental level of the children in care.
- Equipment shall be constructed in a sturdy manner and be in good operating condition with no sharp, rough, loose, or pointed edges.
- Large, inflatable jumping toys may not be used during hours of child care.
- Various types of play equipment shall be provided to allow for large and small muscle activity, dramatic play, and intellectual stimulation.
- Indoor play equipment shall be provided to allow each child a choice of at least 3 activities involving equipment when all children are using equipment.
- Outdoor play equipment shall be provided to allow each child at least one activity when all children are using equipment at the same time.

Provider and parent communication

The current rules require the provider to develop written information that specifies the charge for child care and the expected frequency of payment for the service. The proposed rules require that the payment information be in a contract that is signed by the child care operator and each child's parent or guardian. The child care operator shall charge the same rates for publicly funded parents and private pay parents.

Prohibited discrimination

The current rule provides that a child care operator may not discriminate on the basis of race, color, sex, sexual orientation, creed, handicap, national origin, or ancestry in accepting children or in the employment of employees. The proposed rules add socioeconomic background as a basis on which child care operators may not discriminate.

School-age child care programs

- The director of a school-age program must have graduated from high school, obtained a high school equivalency diploma, or obtained a certificate of general education development.
- No staff member, volunteer, visitor or parent with symptoms of communicable disease or physical illness, or whose behavior gives a reason to be concerned for the safety of the children, may be allowed on the premises of the program.
- The staff members shall be physically and emotionally able to provide responsible child care.
- The facility inspection report by the Department of Commerce must be filed in the county or tribal agency. The current rule requires the report to be filed in licensing office of the Department of Health and Family Services' regional office.
- The premises shall have no flaking or deteriorating paint on exterior or interior surfaces in areas accessible for children. Lead-based paint may not be used on any surface on the premises.
- The inside temperature may not be less than 67 degrees Fahrenheit.
- If the inside temperature exceeds 80 degrees Fahrenheit, fans must be provided to improve air circulation.
- The certified child care operator shall keep a current, written record of the daily hours of attendance of each child in care, including the actual arrival and departure

times for each child. Attendance records shall be kept for at least 3 years.

- A working cellular phone shall be taken on field trips.
- May not hit, spank, pinch, shake or inflict any other form of corporal punishment on a child, or use any discipline which is frightening to the child, including binding or trying to restrict the child's movement or enclosing the child in a confined space such as a closet, basement, locked room, box, or similar cubicle.
- Each child and adult being transported in a vehicle with a seating capacity of 15 or fewer shall be seated and properly restrained in an individual seat belt or, for a child under 8 years of age, a child safety restraint system in compliance with s. 347.48 (2m) and (4), Stats as follows:
- If a child is at least 4 years old but less than 8 years old, weighs at least 40 pounds but not more than 80 pounds, and is not more than 57 inches in height, the child shall be properly restrained in a shoulder-positioning child booster seat.
- A child under 13 years of age may not ride in the front seat of a vehicle.
- The program shall have a written transportation permission slip signed by a parent or guardian on file.
- No child may be left unattended in a vehicle.

Federal regulations

There are no applicable federal regulations.

Surrounding states regulations

Iowa allows child care subsidy payments to be made to a nonregistered family child care home. The Iowa Department of Human Services sends the adult caretaker selected by the parent a pamphlet on minimum health and safety requirements and a payment application. The application must be signed by the provider and returned to the department before payment may be made. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements, including minimum health and safety requirements, limits on the number of children for whom care may be provided, unlimited parental access to the children during hours when care is provided, and conditions that warrant nonpayment.

Illinois allows child care subsidy payments to a day care home exempt from licensing if not more than 3 children are care for, including the provider's own children, unless all children are from the same household. The provider may not have certain criminal convictions or child abuse and neglect findings.

Minnesota allows child care subsidy payments to legal nonlicensed providers who satisfy registration requirements and provide the county with an assurance that the provider is in compliance with state and local health ordinances and building and fire codes applicable to the premises where child care is provided. A county may conduct criminal history background, county record, and district court record investigations on providers and other persons with access to children in care. A county may deny payment if a the county know a particular provider is unsafe or that the circumstances of the child care arrangement are unsafe. A provider must obtain an immunization record for each child in care within 90 days of starting to care for the child. A provider may not charge child care assistance participants more than families not receiving child care assistance for like services.

Michigan regulates family child care homes for the care of 1 to 6 unrelated children by requiring registration and certification of compliance with applicable rules. The rules require that the registrant have a high school diploma or

equivalent, have a written and signed agreement with a responsible person who is 18 years of age or older to provide care during an emergency situation, report to the department within 7 days if any person who care for children or lives in the home has been treated on an inpatient or outpatient basis for an emotional, mental, or substance abuse problem during the last 2 years or if any person has been admitted to or released from a correctional facility. The registrant shall complete no fewer than 10 hours of training each year, shall maintain a file with a statement by a licensed physician that attests to the mental and physical health of all caregivers, and shall retain daily attendance records for 4 years that show arrival and departure times for each child in care. All child care homes shall have at least 2 remotely located exits for every floor level occupied by children. A window may be used as a second exit if, among other things, it is of a size and design to allow for the evacuation of all children and caregiving staff.

Factual data and analytical methodologies

The Department collaborated with the Child Abuse and Neglect Prevention Board and the child care licensing staff of the Department of Health and Family Services to implement the requirement on training to prevent shaken baby syndrome in 2005 Wisconsin Act 165. The proposed rules incorporate the changes required by 2005 Wisconsin Act 106 on using booster seats and other restraints for children under 8 years old in motor vehicles used to transport children. The Department also met with certification workers in county and tribal agencies and with family child care providers represented by AFSCME to discuss suggested rule changes.

Effect on Small Businesses

The proposed rules will affect small businesses but will not have a significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Coordinator is Jennifer Jirschele, jennifer.jirschele@dwd.state.wi.us, (608) 266-1023.

Analysis used to determine effect on small businesses

The standards in these rules are intended to protect and promote the health, safety and welfare of children in the care of unlicensed child care providers who receive reimbursement through state or federal funds.

Reporting requirements in the current rule include a general requirement to report any changes that affect the provider's eligibility under this chapter. Providers found this general requirement unclear so the proposed rules specify the important eligibility changes that must be reported to the county or tribal agency.

Bookkeeping requirements in the proposed rules include a requirement that there be a contract for each enrolled child be signed by the child care operator and a parent or guardian, and the operator must have on file a copy of the driver's license for all persons transporting children.

Professional skills include a requirement that a school-age child care operator have a high school diploma or equivalent; all certified family child care operators, employees, and

volunteers who provide care and supervision for children under 5 years of age shall receive department-approved training on shaken baby syndrome and appropriate ways to manage crying or fussing children; and all family child care operators and substitutes who have worked at least 240 hours in a Level I (regular) home must take 2 credits of early childhood training or non-credit department-approved training. The T.E.A.C.H. Early Childhood® WISCONSIN Scholarship Program offers scholarship opportunities to teachers, family child care providers, center directors and administrators for credit-based training.

Fiscal Estimate

The cost to implement training to prevent shaken baby syndrome was included in the fiscal estimate for 2005 Wisconsin Act 165 (SB 221). The proposed rules add no cost beyond the bill estimate.

The rule allows a county or tribal agency to charge a fee for school-age child care certification not to exceed the licensing fee for a group child care center that provides care and supervision for 9 or more children, plus the costs of the required criminal record checks. There are currently 28 school-age certified child care programs in the state. It is not known how many counties will charge a certification fee. Counties currently have the authority the charge fees for family child care certification and approximately half of the counties assess a fee. The potential increase in county revenue is indeterminate and likely to be very minor.

No other rule proposals are expected to have a fiscal effect.

Agency Contact Person

Pirkko Zweifel, Child Care Section, (608) 261-4595, pirkko.zweifel@dwd.state.wi.us.

Submission of Comments

An electronic copy of the proposed rules is available at <http://www.dwd.state.wi.us/dwd/hearings.htm>. A copy of the proposed rules is also available at <http://adminrules.wisconsin.gov>. This site allows you to view documents associated with this rule's promulgation, register to receive email notification whenever the Department posts new information about this rulemaking order, and submit comments and view comments by others during the public comment period. You may receive a paper copy of the rule or fiscal estimate by contacting:

Elaine Pridgen
Office of Legal Counsel
Dept. of Workforce Development
P.O. Box 7946
Madison, WI 53707-7946
(608) 267-9403
elaine.pridgen@dwd.state.wi.us

Written comments on the proposed rules received at the above address, email, or through the <http://adminrules.wisconsin.gov> web site no later than **August 16, 2007**, will be given the same consideration as testimony presented at the hearing.

Submittal of Proposed Rules to the Legislature

Please check the Bulletin of Proceedings – Administrative Rules for further information on a particular rule.

Health and Family Services

(CR 07-042)

Chs. HFS 83, 88, 89, 132, and 134, relating to involuntary administration of psychotropic medication.

Revenue

(CR 07-027)

Ch. Tax 1, relating to electronic funds transfer.

Regulation and Licensing

(CR 07-031)

Chs. RL 160 to 163 and 166 to 168, relating to substance abuse professionals.

Rule Orders Filed with the Revisor of Statutes Bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at gary.poulson@legis.wisconsin.gov or (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Health and Family Services (CR 06-053)

An order affecting ch. HFS 132, relating to nursing homes and affecting small businesses.
Effective 9-1-07.

Health and Family Services (CR 06-086)

An order affecting ch. HFS 172, relating to pools and water attractions.
Effective 2-1-08

Natural Resources (CR 06-126)

An order affecting ch. NR 328, relating to bank erosion control on rivers and streams.
Effective 8-1-07.

Transportation (CR 06-135)

An order affecting ch. Trans 138, relating to dealer facilities, records and licenses.
Effective 9-1-07.

Rules Published with this Register and Final Regulatory Flexibility Analyses

The following administrative rule orders have been adopted and published in the July 31, 2007, Wisconsin Administrative Register. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code and also to the subscribers of the specific affected Code.

For subscription information, contact Document Sales at (608) 266-3358.

Agriculture, Trade and Consumer Protection (CR 06-136)

An order affecting ch. ATCP 30, relating to soil fumigant pesticides. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

This rule regulates commercial pesticide applicators and agricultural producers that apply or receive applications of metam sodium and chloropicrin soil fumigants. Many of the regulated businesses are small businesses, but others are large. Most of the regulated farmers are potato growers.

This rule protects neighboring farms and businesses from adverse effects of improper soil fumigant applications. Many of the protected businesses are small businesses.

This rule imposes new regulations on the use of chloropicrin soil fumigants (see above). Approximately 71,000 acres of potatoes were planted in Wisconsin in 2004. Chloropicrin is currently applied on approximately 2,000 acres of potatoes and 25 acres of state-owned seedling nurseries in Wisconsin. Chloropicrin applications are made by commercial pesticide applicators that have the equipment and expertise to handle and apply chloropicrin. Chloropicrin-treated acreage is expected to increase due to pest problems and the efficacy of chloropicrin products.

DATCP estimates that this rule will cost \$8,000 to \$12,000 per year for the industry as a whole, mainly for increased costs of applying chloropicrin to approximately 2,000 acres of potatoes. Increased pesticide applicator costs will generally be passed on to farmers. Most of the farms that use chloropicrin are small businesses, but the single largest user (accounting for approximately 25% of the treated acreage) is not a small business.

This rule relaxes some current requirements related to metam sodium applications (post-application inspection requirements and setbacks for "tarped" applications). Farmers and pesticide application businesses that apply metam sodium soil fumigants may experience a small decrease in costs as a result of these changes.

By establishing clear application standards and procedures, this rule protects neighboring farms, businesses and individuals from improper applications. It also helps protect complying pesticide users from liability for improper applications.

This rule applies to large and small businesses alike. An exemption for small business would undermine the effectiveness of the rule in preventing human exposure to metam sodium and chloropicrin. This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.

Summary of Comments by Legislative Review Committees

On April 13, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education on April 19, 2007 and the Assembly Committee on Agriculture and Higher Education on April 23, 2007. As of May 21, 2007 no action was taken by these committees.

Commerce (CR 06-119)

An order affecting chs. Comm 2 and others, relating to plan review processing times. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The existing plan review processing times specified throughout various department codes are based on receipt of all forms, fees, documents and information required to complete the review. This factor in determining the starting date of processing times is not compatible with the current procedure that permits individuals to schedule a plan review appointment over the Internet or by telephone. Under this appointment scheduling, plans and all the necessary documents are submitted to and received by the department any time before the appointment date. Without reflecting appointments in the processing rules, receipt of plans so far in advance of their appointment may result in exceeding the maximum allowable processing time even before the appointment date. The proposed rules are intended to clarify when the permit processing times begin, especially in light of plan review by appointment scheduling. The proposed rules also correct a typographical error in recently enacted rules pertaining to continuing education obligations for the renewal registrations as automatic fire sprinkler contractor-maintenance. The proposed rules will require 12 hours of continuing education instead of 24 hours.

The department does not believe the rule revisions will have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

No comments were received.

Health and Family Services (CR 07-028)

An order affecting ch. HFS 51, relating to pre-adoption training for adoptive parents. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The rules will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

The Department responded in writing to written questions received from the Assembly Committee on Children and Family Law. No comments were received from that Committee. The Department also did not receive comments from the Senate Committee on Economic, Development, Job Creation, Family Prosperity, and Housing.

Natural Resources (CR 06-104)

An order creating ch. NR 432, relating to establishment of provisions for major electric generating units in Wisconsin to comply with the Clean Air Interstate (CAIR) promulgated by the U.S. Environmental Protection Agency. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

Under Wisconsin law, none of the electric generating units that are impacted by CAIR are a small business. CAIR imposes no reporting, compliance of performance standards on small businesses.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Senate Committee on Environment and Natural Resources held a public hearing on February 13, 2007 and did not request any modification. The Assembly Committee on Natural Resources held a public hearing on March 28, 2007. On April 11, 2007 the Committee asked the Department to consider unspecified modification to the proposed rule. The Department did not respond to the Committee's request. The rule was then referred to the Joint Committee for Review of Administrative Rules on April 27, 2007. A public hearing was held on May 21, 2007. At an executive session on June 13, 2007, the objection was not upheld.

Natural Resources (CR 06-110)

An order affecting ch. NR 484 and creating ch. NR 460 Appendix EEEEE and subch. III of ch. NR 463, relating to national emission standards for hazardous air pollutants for iron and steel foundries. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will not have a significant economic impact on a substantial number of small businesses. This is primarily because the proposed rule is identical to the existing federal rule, with which all affected sources are already required to comply. Costs to the affected sources are being incurred in response to the federal rule, which has been in effect since April 22, 2004. No additional costs will be incurred in response to the proposed state rule.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On April 11, 2007, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested as a result of this hearing.

Natural Resources (CR 06-126)

An order affecting ch. NR 328, relating to bank erosion control on rivers and streams. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule does not regulate small business. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Senate Committee on Environment and Natural Resources held a public hearing on May 23, 2007. The Department did not receive any comments or requests for modifications as a result of these hearings.

Natural Resources (CR 06-131)

An order affecting ch. NR 10, relating to the deer hunting season and permit issuance regulation changes. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule pertains to deer hunting and permit issuance. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees

The proposed rule was reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Natural Resources. On April 11, 2007, the Assembly Committee on Natural Resources held a public hearing. No modifications were requested as a result of this hearing.

Natural Resources (CR 07-016)

An order affecting chs. NR 428 and 484, relating to implementation of Reasonably Available Control Technology (RACT) NO_x emission limitations applicable to major sources in the 8-hour ozone non-attainment area in southeastern Wisconsin. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

There are no emission or performance requirements or compliance and reporting requirements proposed for small businesses and as such the rules are not anticipated to directly affect small businesses. The proposed RACT rules are applicable to major industrial entities and electric utility facilities.

Summary of Comments by Legislative Review Committees

The proposed rules were reviewed by the Senate Committee on Environment and Natural Resources and the Assembly Committee on Natural Resources. The Senate Committee on Environment and Natural Resources held a public hearing on May 23, 2007 and an executive session on May 29, 2007. The Assembly Committee on Natural Resources held a public hearing and executive session on May 30, 2007. The Committees did not have any requests for modification and waived the remainder of their review period.

**Public Service Commission
(CR 06-139)**

An order affecting ch. PSC 137, relating to rules regarding energy efficiency and renewable resource programs. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rules will have no adverse effect on small businesses. Because the proposed rules will promote energy efficiency and renewable resource programs that can help small business customers, the effect of the proposed rules on small businesses will be positive, not negative.

Summary of Comments by Legislative Review Committees

No comments were received.

**Regulation and Licensing
(CR 06-125)**

An order affecting chs. RL 4 and 174 to 177, relating to registration of sanitarians. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Summary of Comments by Legislative Review Committees

No comments were received.

**Transportation
(CR 06-103)**

An order affecting ch. Trans 200, relating to specific information signs. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The Small Business Ombudsman from the Department of Commerce pointed out that a first come first served basis for granting the limited number of "Attraction" signage available may well have an adverse effect on small businesses, especially if joined with any minimum annual attendance or similar requirement. As an alternative the suggestion was made that priority or first opportunity be given to those "Attractions" closest to the intersection or exit. If an "Attraction" chooses not to participate, the next closest would be given the opportunity or priority. This method would have a neutral impact and not be adverse to smaller "Attractions." The Department has included language that will permit this type of evaluation where it may be practical to have an application deadline for initial "Attractions" signage or a similar means of concurrent comparison by the proposed advisory council. The Department of Commerce representative will be a member of the advisory council. Other members of the advisory council may balance this small

business interest with the need to consider the "regional significance" of the applicant's "Attraction." The consensus was that bumping would not be allowed, i.e., a new "Attraction" applicant closer to the intersection or exit could not bump an existing "Attraction" that had received a sign. The rule does provide additional participation opportunities for small businesses that are "Attractions" that do not presently have that opportunity. Since businesses request that they be identified on state-installed signs, the sign application process will enforce the rule and any costs incurred for the signage are voluntarily incurred.

Summary of Comments by Legislative Review Committees

No comments were received.

**Veterans Affairs
(CR 07-022)**

An order repealing ss. VA 8.01 and 8.03 (1), relating to the county veterans service officer grant program. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The department has determined that the repeal of the salary schedule references would have no fiscal impact. Grant amounts are determined under a distinct statutory provision. The proposed order has no regulatory aspect to it and has no effect upon small business.

Summary of Comments by Legislative Review Committees

No comments were received.

**Workforce Development
(CR 06-032)**

An order affecting ch. DWD 133, relating to unemployment insurance and temporary help employers. Effective 8-1-07.

Summary of Final Regulatory Flexibility Analysis

The proposed rule will affect small business as defined in s. 227.114 (1), Stats., but the rule will not have a significant economic impact on a substantial number of small businesses.

Summary of Comments by Legislative Review Committees

The Senate Committee on Labor, Elections and Urban Affairs requested that the Department consider making modification in the length of the time employees are given to provide notices to employers regarding the end of assignments. The Department agreed to modify the rule by extending the time that employees may give notice from the end of the first full business day after the end of an assignment to the end of the second full business day after the end of an assignment.

Sections affected by rule revisions and corrections

The following administrative rule revisions and corrections have taken place in **July 2007**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

Revisions

Agriculture, Trade and Consumer Protection

Ch. ATCP 30

S. ATCP 30.22 (1) (am), (f) and (g), (3), (4) (a), (5) (a), (b) and (c) and (7) (a)

Commerce

Ch. Comm 2

S. Comm 2.07 (3) (a), (4) (a)

S. Comm 2.31 Tables 1 to 3

Ch. Comm 3

S. Comm 3.03 (5) (a) to (e)

Ch. Comm 5

S. Comm 5.54 (5) (c)

Ch. Comm 18

S. Comm 18.1013 (3) (e)

Ch. Comm 20

S. Comm 20.14 (1)

Ch. Comm 26

S. Comm 26.08 (2)

Ch. Comm 33

S. Comm 33.10 (5)

Ch. Comm 34

S. Comm 34.05 (5)

Ch. Comm 40

S. Comm 40.10 (5)

Ch. Comm 43

S. Comm 43.10 (6)

Ch. Comm 61

S. Comm 61.31 (3) (a)

Ch. Comm 82

S. Comm 82.20 (5) (intro.), (12) (a) and (b)

Ch. Comm 83

S. Comm 83.22 (3) (a)

Ch. Comm 90

S. Comm 90.04 (1) (a), (2) (a) and (3) (a)

Health and Family Services

Ch. HFS 51

S. HFS 51.01

S. HFS 51.02

S. HFS 51.03 (15g), (15r), (18g) and (18r)

S. HFS 51.09 (2) (a)

S. HFS 51.10

Natural Resources

Ch. NR 10

S. NR 10.01 (3) (e), (em), (es) and (ev)

Ch. NR 328

Ss. NR 328.31 to 328.39

Ch. NR 428

S. NR 428.02 (7m)

S. NR 428.04 (2) (h)

S. NR 428.05 (3) (e)

Ss. NR 428.20 to 428.26

Ch. NR 432 (Entire Chapter)

Ch. NR 460 Appendix EEEEE

Ch. NR 463

Ss. NR 463.21 to 463.27

Ch. NR 484

S. NR 484.04 (13), (21m), (26m) (bm), (d), and (27)

S. NR 484.06 (4) (c) and (e)

Public Service Commission

Ch. PSC 137 (Entire Chapter)

Regulation and Licensing

Ch. RL 4

S. RL 4.07 (66m)

Ch. RL 174 (Entire Chapter)

Ch. RL 175 (Entire Chapter)

Ch. RL 176 (Entire Chapter)

Ch. RL 177 (Entire Chapter)

Transportation

Ch. Trans 200

S. Trans 200.015 (2) (m) and (n)

S. Trans 200.06 (2), (2g), (2r), (7) (c), and (12)

S. Trans 200.08 (2) (e), (3), and (7) (a)

Veterans Affairs

Ch. VA 8

S. VA 8.01

S. VA 8.03 (1)

Workforce Development

Ch. DWD 133 (Entire Chapter)

Editorial corrections

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing.

Commerce

Ch. Comm 5

S. Comm 5.327 (4)

Financial Institutions–Wisconsin Consumer Act

Ch. DFI–WCA 1 (Entire chapter)

Financial Institutions–Banking

Ch. DFI–Bkg 80 (Entire chapter)

Sections affected by revisor's corrections not published

Revisor's corrections under s. 13.93 (2m) (b), Stats., identified in this Wis. Adm. Register.

Subscriber's note: Please make corrections (manually) in your printed code. The affected sections are shown as corrected on the Revisor of Statutes Internet site, [Http://www.legis.state.wi.us/rsb/](http://www.legis.state.wi.us/rsb/), and on the WisLaw® CD-ROM. Printed code will be shown as corrected in its next printing.

Location of invalid cross-reference	Invalid cross-reference	Correction
VA 1.02	DFI-Bkg 80.85, Wis. Adm. Code	DFI-WCA 1.85

Executive Orders

The following are recent Executive Orders issued by the Governor.

Executive Order 206. Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for Firefighter David Rufer of the Monroe Fire Department.

Public Notices

NOTICE OF HEARING

Agriculture, Trade and Consumer Protection

Informational Hearings On The Agricultural Producer Security Law

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings related to Wisconsin's Agricultural Producer Security Law. DATCP seeks public comment on the possible need for changes to the law. Changes, if any, will require legislative action.

Wisconsin's Agricultural Producer Security Law helps protect agricultural producers against catastrophic defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors"). Contractors must be licensed by DATCP, and most contractors must contribute to an agricultural producer security fund ("fund"). If a contributing contractor fails to pay producers, DATCP may reimburse producers from the fund (up to specified limits).

Contributing contractors must pay annual fund assessments based on risk (contractors with large producer obligations, poor financial ratios or risky practices pay higher assessments). Grain, milk and vegetable contractors pay into a single fund (DATCP tracks contributions by industry sector). Fund contributions comprise a very small share (considerably less than 1/10 of one percent) of contractor procurement costs.

The fund has a current balance of approximately \$7.5 million. No more than 60% of the fund balance (about \$4.5 million) can be paid out in any individual contractor default. That is enough to cover most, but not all, potential contractor defaults (the largest default to date was the \$2.5 million Kasson cheese default in 1987). A default by a very large contractor could overwhelm the current fund, and leave producers largely unpaid (a handful of large contractors have default exposures of \$20–30 million each).

Current law directs DATCP to purchase backup security to supplement the fund (combined default coverage up to \$20 million). However, DATCP has not been able to purchase any backup security because there are no willing providers. DATCP will therefore ask the Legislature to repeal the (unworkable) backup security requirement. The lack of backup security leaves a continuing "hole" in security coverage (for producers who ship to certain very large contractors).

Under current DATCP rules, contractors must make annual disclosures to producers, to help producers assess their financial risk. Each contractor must disclose, in brief general terms, whether the fund will provide full compensation, partial compensation, or no compensation to producers if the contractor defaults. Large contractors with default exposure in excess of fund capacity may file voluntary security to avoid making unfavorable disclosures (but few large contractors have chosen to do so). Under current law, DATCP cannot ordinarily *require* contractors to file supplementary security.

DATCP seeks public comment on possible legislative changes to the producer security law. DATCP seeks public input on the following issues, among others:

- Is there a continuing need for a producer security law?
- If so, what is the appropriate level of coverage for producers? If that amount exceeds coverage currently available in the fund, how should that coverage be provided?
- In most cases contractors currently pay directly into the fund based on overall size and financial risk. Should contractors continue to cover the cost of providing coverage? Should producers contribute to the fund directly?
- Do producers clearly understand disclosures about the extent of their security coverage and financial risk? Do security disclosures actually influence producer decisions?

Hearing Dates and Locations

DATCP will hold 3 public hearings at the times and places shown below. DATCP invites the public to attend the hearings, and to comment on the producer security law (including the issues noted above).

Thursday, August 16, 2007

The hearing will begin at 2:30 PM or at the conclusion of the rulemaking hearing on chs. ATCP 99–101, Wis. Adm. Code, whichever time is later.

DATCP Northwest Regional Office
3610 Oakwood Hills Pkwy
Eau Claire, WI 54701–7754

Tuesday, August 21, 2007

The hearing will begin at 2:30 PM or at the conclusion of the rulemaking hearing on chs. ATCP 99–101, Wis. Adm. Code, whichever time is later.

DATCP Northeast Regional Office
Room 152A
200 N Jefferson St.
Green Bay, WI 54301

Wednesday, August 22, 2007

The hearing will begin at 10:30 AM or at the conclusion of the rulemaking hearing on chs. ATCP 99–101, Wis. Adm. Code, whichever time is later.

Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Dr.
Board Room (CR–106)
Madison, WI 53718–6777

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by August 6, 2007, by writing to Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708–8911, telephone (608) 224–4928. Alternatively, you may contact the DATCP TDD at (608) 224–5058. Handicap access is available at the hearings.

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